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

WHEN: Tuesday, May 14, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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

Rules and Regulations

Federal Register

Vol. 78, No. 75

Thursday, April 18, 2013

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0810; Directorate Identifier 2011–NM–195–AD; Amendment 39–17420; AD 2013–08–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A330–300, A340–200 and A340–300 series airplanes. This AD was prompted by a report that revealed the wheel axles of the main landing gear (MLG) were machined with a radius as small as 0.4 millimeters. This AD requires replacing the wheel axle of the MLG with a serviceable part. We are issuing this AD to prevent fatigue of the wheel axle of the MLG, which could adversely affect the structural integrity of the airplane.

DATES: This AD becomes effective May 23, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 23, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 27, 2012 (77 FR 51729). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> EASA [European Aviation Safety Agency] has received a report via Airbus and Messier-Bugatti-Dowty Ltd, from a Maintenance repair organisation, concerning a specific repair, accomplished on certain MLG wheel axles. Investigations revealed that the axles have been machined with a radius as small as 0.4 mm.
>
> This condition, if not corrected, has a detrimental effect on the fatigue lives of these parts, possibly affecting the structural integrity of the aeroplane. Fatigue analyses were performed, the results of which indicated that the life limit of the affected MLG wheel axles must be reduced to below the one stated in the A330 and A340 Airbus Airworthiness Limitation Section (ALS) Part 1.
>
> For the reasons described above, this [EASA] AD [2011–0170, dated September 7, 2011] requires the replacement of the MLG wheel axles before reaching the new reduced demonstrated life limit.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 51729, August 27, 2012), or on the determination of the cost to the public.

Explanation of Changes Made Since NPRM (77 FR 51729, August 27, 2012) Was Issued

Since the NPRM (77 FR 51729, August 27, 2012) was issued, we have reviewed Airbus Alert Operators Transmission (AOT) A330–32A–3256, Revision 01, including Appendix 1, dated October 18, 2012 (for Model A330–200 and –300 series airplanes); and Airbus AOT A340–32A–4292, Revision 01, including Appendix 1, dated October 18, 2012 (for Model A340–200 and –300 series airplanes). This service information includes additional wheel axle serial numbers and corrects an incorrectly listed serial number. We have revised paragraphs (g), (h), and (k) (paragraph (j) of the NPRM) of this AD to refer to the new service information. We have coordinated this change with EASA.

We have also added new paragraph (j), ''Credit for Previous Actions,'' to this AD to provide credit for actions performed before the effective date of this AD using Airbus All Operator Telex A330–32A3256, including Appendix 1, dated August 24, 2011; and Airbus All Operator Telex A340–32A4292, including Appendix 1, dated August 24, 2011.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 51729, August 27, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 51729, August 27, 2012).

Costs of Compliance

We estimate that this AD will affect 59 products of U.S. registry. We also estimate that it will take about 48 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $153,443 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,293,857, or $157,523 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 51729, August 27, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–03 Airbus: Amendment 39–17420. Docket No. FAA–2012–0810; Directorate Identifier 2011–NM–195–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 23, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, except those on which Airbus modification 54500 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by a report that revealed the wheel axles were machined with a radius as small as 0.4 millimeters. We are issuing this AD to prevent fatigue of the wheel axle of the main landing gear (MLG), which could adversely affect the structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Definitions

(1) For the purpose of this AD, an affected MLG wheel axle is defined as a MLG axle having a part number and serial number specified in Part 1 of Appendix 1 of Airbus Alert Operators Transmission (AOT) A330–32A–3256, Revision 01, dated October 18, 2012 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–32A–4292, Revision 01, dated October 18, 2012 (for Model A340–200 and –300 series airplanes).

(2) After removal from an airplane, an affected MLG wheel axle that has reached its life limit is considered an unserviceable part.

(3) The term ''life limit'' used in this AD means a post-repair life limit.

(h) Replacement

At the later of the times specified in paragraph (h)(1) or (h)(2) of this AD: Replace all affected MLG wheel axles with serviceable parts, in accordance with the instructions of Airbus AOT A330–32A–3256, Revision 01, including Appendix 1, dated October 18, 2012 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–32A–4292, Revision 01, including Appendix 1, dated October 18, 2012 (for Model A340–200 and –300 series airplanes).

(1) Before the accumulation of the applicable landings or flight hours specified in table 1 to paragraph (h)(1) of this AD. The ''Post-repair MLG Wheel Axle Life Limit'' must be counted from the date of installation of the MLG wheel axle on an airplane which occurs after the date of repair specified in Part 1 of Appendix 1 of Airbus AOT A330–32A–3256, Revision 01, dated October 18, 2012 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–32A–4292, Revision 01, dated October 18, 2012 (for Model A340–200 and –300 series airplanes).

TABLE 1 TO PARAGRAPH (h)(1) OF THIS AD—POST-REPAIR MLG WHEEL AXLE LIFE LIMIT

Affected airplanes	Post-repair MLG wheel axle life limit, whichever occurs first (see paragraph (h)(1) of this AD)
Model A340–311, –312, and –313 airplanes, weight variant (WV) 00	4,700 landings or 22,250 flight hours.
Model A340–211, –212, and –213 airplanes, WV00	4,600 landings or 29,000 flight hours.
Model A340–313 airplanes, WV02 and WV05	3,950 landings or 16,900 flight hours.
Model A330–301, –321, –322, –341, and –342 airplanes, WV00 and WV01	5,050 landings or 15,200 flight hours.
Model A330–201, –202, –203, –223, and –243, WV02, WV05, and WV06	4,450 landings or 17,900 flight hours.
Model A330–301, –302, –303, –323, –342, and –343 airplanes, WV02 and WV05	5,150 landings or 13,450 flight hours.

(2) Within 24 months after the effective date of this AD without exceeding the applicable landings or flight hours specified in table 2 to paragraph (h)(2) of this AD. The ''Post-repair MLG Wheel Axle Flight Hours or Landings, . . . not to be Exceeded'' must

be counted from the date of installation of the MLG wheel axle on an airplane, which occurs after the date of repair specified in the Part 1 of Appendix 1 of Airbus AOT A330–32A–3256, Revision 01, dated October 18, 2012 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–32A–4292, Revision 01, dated October 18, 2012 (for Model A340–200 and –300 series airplanes).

TABLE 2 TO PARAGRAPH (h)(2) OF THIS AD—POST-REPAIR MLG WHEEL AXLE FLIGHT HOURS OR LANDINGS

Affected airplanes	Post-repair MLG wheel axle flight hours or landings, whichever occurs first, not to be exceeded (see paragraph (h)(2) of this AD)
Model A340–311, –312, and –313 airplanes, WV00	7,830 landings or 37,080 flight hours.
Model A340–211, –212, and –213 airplanes, WV00	7,660 landings or 48,330 flight hours.
Model A340–313 airplanes, WV02 and WV05	6,580 landings or 28,160 flight hours.
Model A330–301, –321, –322, –341, and –342 airplanes, WV00 and WV01	8,410 landings or 25,330 flight hours.
Model A330–201, –202, –203, –223, and –243 airplanes, WV02, WV05, and WV06	7,410 landings or 29,830 flight hours.
Model A330–301, –302, –303, –323, –342, and –343 airplanes, WV02 and WV05	8,580 landings or 22,580 flight hours.

(i) Parts Installation Limitation

As of the effective date of this AD: An affected MLG wheel axle may be installed on an airplane, provided the MLG wheel axle has not exceeded the limits specified in table 1 to paragraph (h)(1) of this AD and it is replaced with a serviceable part before reaching the life limit defined in table 1 to paragraph (h)(1) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD with respect to the affected MLG wheel axle defined in paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (j)(1) or (j)(2) of this AD, which is not incorporated by reference in this AD.

(1) Airbus All Operator Telex A330–32A3256, including Appendix 1, dated August 24, 2011 (for Model A330–200 and –300 series airplanes).

(2) Airbus All Operator Telex A340–32A4292, including Appendix 1, dated August 24, 2011 (for Model A340–200 and –300 series airplanes).

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0170, dated September 7, 2011, and the service information specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD, for related information.

(i) Airbus AOT A330–32A–3256, Revision 01, including Appendix 1, dated October 18, 2012.

(ii) Airbus AOT A340–32A–4292, Revision 01, including Appendix 1, dated October 18, 2012.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.*

(m) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission (AOT) A330–32A–3256, Revision 01, including Appendix 1, dated October 18, 2012. The Document number and revision level are not identified on pages 2–5 of this AOT; the revision date is identified on only page 1 of this AOT and the first page of Appendix 1 of this AOT.

(ii) AOT A340–32A–4292, Revision 01, including Appendix 1, dated October 18, 2012. The Document number and revision level are not identified on pages 2–5 of this AOT; the revision date is identified on only page 1 of this AOT and the first page of Appendix 1 of this AOT.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on April 5, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08741 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1087; Directorate Identifier 2009–SW–32–AD; Amendment 39–17424; AD 2013–08–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, L, and L1 helicopters to require an initial and repetitive inspections of the outer skin, butt strap, and fuselage frame for a crack and modification of the helicopter. This AD was prompted by an AD issued by the

European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, which states that a crack was discovered in a fuselage frame during a daily check. The actions of this AD are intended to detect a crack, to prevent loss of airframe structural integrity and subsequent loss of control of the helicopter.

DATES: This AD is effective May 23, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of May 23, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On October 16, 2012, at 77 FR 63262, the **Federal Register** published our Notice of Proposed Rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to certain ECF Model AS332C, L, and L1 helicopters without modification (MOD) 0722907. That NPRM proposed to require an initial and repetitive visual inspections for a crack in the outer skin and the butt strap in the sliding cowling right-hand and left-hand rail attachment areas on Frame 5295, and if there is a crack, inspecting for a crack in Frame 5295 and repairing any cracked part. The NPRM also proposed to require modifying each helicopter with MOD 0726478R2 on the sliding cowling rails and shims in the attachment areas on Frame 5295. The proposed requirements were intended to detect a crack, to prevent loss of airframe structural integrity and subsequent loss of control of the helicopter.

EASA issued EASA AD No. 2008–0035–E, dated February 21, 2008, to correct an unsafe condition for the ECF Model AS 332 C, C1, L, and L1 helicopters. EASA advises that a crack was discovered on an ECF Model AS332L helicopter in fuselage frame 5295, which has plates and angles assembled by riveting that corresponds to the first generation frame (before MOD 0722907). The crack in the frame was found because of a crack in the outer skin and in the butt strap where the rail of the main gear box (MGB) sliding cowling is attached to the frame.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 63262, October 16, 2012).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except we have updated the contact information for American Eurocopter Corporation. This minor editorial change is consistent with the intent of the proposals in the NPRM (77 FR 63262, October 16, 2012) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

This AD requires you to repair Frame 5295 before further flight rather than contacting the manufacturer. This AD refers to a check as an inspection to be performed by a mechanic versus a check that a pilot can do if specifically allowed by the AD. This AD also does not list the Model AS332C1 in the applicability because this model is not type certificated in the U.S. This AD also does not allow further flight with the outer skin or butt strap cracked unless it is a ferry flight to a repair facility.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. 05.00.76, Revision 0, dated February 20, 2008 (ASB), which specifies checking for a crack on the outside of the helicopter, on the skin, and the butt strap near the sliding cowling rail attachment. If a crack is found in the outer skin or butt strap, the ASB specifies visually checking for a crack in Frame 5295. The ASB specifies doing MOD 0726478R2, which consists of cutting out a section of the sliding cowling rails. This cut-out exposes the splice near the rail attachment holes, making it easier to detect a crack in the frame during the 10-hour repetitive inspection and thus reducing the risks of a crack going undetected in Frame 5295. Also, the ASB specifies contacting the manufacturer for the ''appropriate repair sheet according to how the crack is situated'' if there is a crack in Area 1 of Frame 5295. EASA classified this ASB as mandatory and issued AD No. 2008–0035–E, dated February 21, 2008, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 5 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate that it will take about 4.25 work-hours per helicopter to initially inspect for a crack and to modify the MGB sliding cowling rails. Each 10-hour repetitive inspection will take about 0.25 work-hour. The average labor rate is $85 per work-hour and required parts will cost about $1,793 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators will be $17,145 or $3,429 per helicopter, assuming 60 repetitive inspections will be performed each year and assuming the entire fleet is modified and no cracks are found.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–07 Eurocopter France: Amendment 39–17424; Docket No. FAA–2012–1087; Directorate Identifier 2009–SW–32–AD.

(a) Applicability

This AD applies to all Model AS332C, L, and L1 helicopters without modification (MOD) 0722907, except helicopters with serial numbers 2078 and 2102, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the outer skin, butt strap, or fuselage frame, which could result in loss of airframe structural integrity, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective May 23, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service (TIS) for helicopters that have 8,800 or more hours TIS or before or upon reaching 8,810 hours TIS for helicopters that have less than 8,800 hours TIS, and thereafter at intervals not to exceed 10 hours TIS, visually inspect for a crack on the outer skin and the butt strap in the sliding cowling right-hand and left-hand rail attachment areas on Frame 5295 as shown in Figure 2 of Eurocopter Alert Service Bulletin No. 05.00.76, Revision 0, dated February 20, 2008 (ASB).

(i) If there is a crack in the outer skin or in the butt strap per paragraph (e)(1) of this AD, before further flight, inspect for a crack in Frame 5295 in the areas shown in Figure 3, Area 1, and Figure 4, of the ASB.

(ii) If there is a crack in the outer skin, the butt strap, or in Frame 5295 in the areas inspected as required by this AD, before further flight, repair the part in accordance with a method approved by the FAA.

(2) Within 300 hours TIS, for each helicopter that has 8,800 or more hours TIS, modify the sliding cowling rails and shims in the attachment areas on Frame 5295 (corresponds to MOD 0726478R2), as depicted in Figure 5 and by following the Accomplishment Instructions, paragraph 2.B.3., of the ASB.

(f) Special Flight Permits

A special flight permit is permitted for a helicopter with a crack in the outer skin or butt strap to operate the helicopter to a location where the requirements of this AD can be accomplished. A special flight permit is not permitted for a helicopter with a crack in Frame 5295.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (France) AD No. 2008–0035–E, dated February 21, 2008.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5311, Fuselage, Main Frame.

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin No. 05.00.76, Revision 0, dated February 20, 2008.

(ii) Reserved.

(3) For Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, Texas 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub*.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on April 8, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–08763 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD; Amendment 39–17426; AD 2013–08–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes. This AD was prompted by a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen, and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. This AD requires, for certain airplanes, performing a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and corrective actions if necessary. For all airplanes, this AD requires performing and meeting the requirements of the low pressure leak test. We are issuing this AD to prevent the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

DATES: This AD is effective May 23, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 23, 2013.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:
Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 11, 2012 (77 FR 55768). That NPRM proposed to require, for certain airplanes, performing a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and corrective actions if necessary. For all airplanes, that NPRM proposed to require performing and meeting the requirements of the low pressure leak test.

Comments

We gave the public the opportunity to participate in developing this AD. The Boeing Company and Kristopher Charles Kleiner supported this final rule. The following presents the comment received on the NPRM (77 FR 55768, September 11, 2012) and the FAA's response to the comment.

Request Clarification of Note 1 to Paragraph (i) of NPRM (77 FR 55768, September 11, 2012)

Air New Zealand requested clarification of Note 1 to paragraph (i) of the NPRM (77 FR 55768, September 11, 2012). Air New Zealand asked if the FAA intended to state a specific revision for the installation of the clamshell coupler in Subject 35–00–00, Oxygen, of Chapter 35, Oxygen, of Part II, Practices and Procedures, of the Boeing 777 Aircraft Maintenance Manual, Revision 65, dated May 5, 2012, knowing that it will be revised within the time frame of this NPRM. Air New Zealand also asked if an alternative method of compliance (AMOC) will be required if an operator intends to use a later revision of the maintenance manual.

We agree to provide clarification of Note 1 to paragraph (i) of the NPRM (77 FR 55768, September 11, 2012). Note 1 to paragraph (i) of the NPRM is provided as guidance and is not an AD requirement; therefore, approval of an AMOC will not be required for using later revisions of the maintenance manual. Since we issued the NPRM, the aircraft maintenance manual has been revised. We have updated Note 1 to paragraph (i) of this AD with the latest revision. We have changed this AD accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 55768, September 11, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 55768, September 11, 2012).

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

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection and leak test	26 work-hours × $85 per hour = $2,210	$0	$2,210	$13,260

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–09 The Boeing Company: Amendment 39–17426; Docket No. FAA–2012–0932; Directorate Identifier 2012–NM–014–AD.

(a) Effective Date

This AD is effective May 23, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report that during a test of the oxygen system, an operator found that the passenger oxygen masks did not properly flow oxygen and that a loud noise occurred in the overhead area, which was caused by the flex line separating from the hard line due to a missing clamshell coupler. We are issuing this AD to prevent the oxygen system flex line from separating from the hard line, which could cause an oxygen leak and a drop in the oxygen system pressure, resulting in improper flow of oxygen through the passenger masks and injury to passengers if emergency oxygen is needed.

(f) Compliance

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

(g) Inspection

Within 36 months after the effective date of this AD, do the applicable actions in paragraph (g)(1) or (g)(2) of this AD.

(1) For Groups 1–6, 8, and 9 airplanes, as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011: Do a detailed inspection of certain areas of the airplane oxygen system to ensure clamshell couplers are installed and fully latched, and perform and meet the requirements of the low pressure leak test, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(2) For Group 7 airplanes, as identified in Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011: Perform and meet requirements of the low pressure leak test, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(h) Corrective Action if Clamshell Coupler Is Not Fully Latched

If, during any inspection required by paragraph (g) of this AD, any clamshell coupler is not fully latched: Before further flight, latch the clamshell coupler, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(i) Corrective Action if Clamshell Coupler Is Not Installed

If, during any inspection required by paragraph (g) of this AD, any clamshell coupler is not installed: Before further flight, install a clamshell coupler.

Note 1 to paragraph (i) of this AD: Guidance on installation of the clamshell coupler may be found in Subject 35–00–00, Oxygen, of Chapter 35, Oxygen, of Part II, Practices and Procedures, of the Boeing 777 Aircraft Maintenance Manual, Revision 67, dated January 5, 2013.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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.

(k) Related Information

For more information about this AD, contact Susan Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 777–35–0024, dated September 1, 2011.

(ii) Reserved.

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

(4) You may 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.

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

Issued in Renton, Washington, on April 5, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08907 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0013; Directorate Identifier 2012–CE–046–AD; Amendment 39–17421; AD 2013–08–04]

RIN 2120–AA64

Airworthiness Directives; Grob-Werke Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Grob-Werke Model G115EG airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the elevator trim tab arms on several Grob G 115 airplanes, which could result in failure of the part and consequent loss of control. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 23, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 23, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Grob Aircraft AG, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: +49 (0) 8268 998 139; fax: +49 (0) 8268 998 200; email: *productsupport@grob-aircraft.de*; Internet: *www.grob-aircraft.com/index.php/g-115e.html*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 15, 2013 (78 FR 2910). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> On several Grob G 115 aeroplanes, elevator trim tab arms Part Number (P/N) 115E–3758 have been found cracked, from a rear mounting hole (either L/H or R/H) to the rear edge of the trim tab arm.
>
> This condition, if not detected and corrected, could lead to further crack propagation, possibly resulting in failure of the part and consequent loss of control of the aeroplane.
>
> For the reasons described above, this AD requires repetitive inspections of the elevator trim tab arm to detect cracks and, if detected, replacement of the part with a serviceable part.
>
> This AD also provides an optional terminating action for the repetitive inspections.

The Model G115EG airplane is the only airplane type-certificated in the United States with the same part numbers and similar configuration as the airplane model described in the MCAI.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 2910, January 15, 2013) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 2910, January 15, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 2910, January 15, 2013).

Costs of Compliance

We estimate that this AD will affect 0 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $372 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $627 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–04 Grob-Werke: Amendment 39–17421; Docket No. FAA–2013–0013; Directorate Identifier 2012–CE–046–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 23, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GROB–WERKE G115EG airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by the discovery of cracks in the elevator trim tab arms on several Grob G 115 airplanes, which could result in failure of the part and consequent loss of control. The Model G115EG airplane is the only airplane type-certificated in the United States with the same part numbers and similar configuration as the airplane model described in the MCAI. We are issuing this proposed AD to detect cracks and prevent the part from failing.

(f) Actions and Compliance

Unless already done, do the following actions following Grob Aircraft Service Bulletin No. MSB1078–186/3, dated August 3, 2012.

(1) Within the next 50 hours time-in-service (TIS) after May 23, 2013 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 200 hours TIS, inspect both left hand (L/H) and right hand (R/H) elevator trim tab arms, part number (P/N) 115E–3758, using a nondestructive testing (NDT) method such as a dye-penetrant or eddy-current that is beyond just a visual inspection.

(2) If during any inspection required in paragraph (f)(1) of this AD a crack is found, before further flight, replace the affected elevator trim tab arm with P/N 115E–3758/1. The replacement of an elevator trim tab arm with P/N 115E–3758/1 will terminate the repetitive inspection requirement for that trim tab arm. Replacement of both R/H and L/H trim tab arms with P/N 115E–3758/1 will terminate the repetitive requirement in paragraph (f)(1) of this AD.

(3) Replacement at any time of an elevator trim tab arm with P/N 115E–3758/1 will terminate the repetitive requirement in paragraph (f)(1) of this AD for that elevator trim tab arm. Replacement of both R/H and L/H trim tab arms with P/N 115E–3758/1 will terminate the repetitive requirement in paragraph (f)(1) of this AD.

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

This AD provides credit for the actions required in this AD if already done before the effective date of this AD following Grob Aircraft Service Bulletin No. MSB1078–186/2, dated March 28, 2012; Grob Aircraft Service Bulletin No. MSB1078–186/1, dated March 8, 2012; or Grob Aircraft Service Bulletin No. MSB1078–186, dated February 15, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090; email: *taylor.martin@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2012–0155, dated August 20, 2012; Grob Aircraft Service Bulletin No. MSB1078–186/2, dated March 28, 2012; Grob Aircraft Service Bulletin No. MSB1078–186/1, dated March 8, 2012; or Grob Aircraft Service Bulletin No. MSB1078–

186, dated February 15, 2012; for related information.

(j) Material Incorporated by Reference

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

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

(i) Grob Aircraft Service Bulletin No. MSB1078–186/3, dated August 3, 2012.

(ii) Reserved.

(3) For Grob Aircraft AG service information identified in this AD, contact Grob Aircraft AG, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; phone: +49 (0) 8268 998 139; fax: +49 (0) 8268 998 200; email: *productsupport@grob-aircraft.de*; Internet: *www.grob-aircraft.com/index.php/g-115e.html*.

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

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

Issued in Kansas City, Missouri, on April 8, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08771 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1127; Directorate Identifier 2010–SW–035–AD; Amendment 39–17423; AD 2013–08–06]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Model 430 helicopters, which requires replacing certain components of the air data system. This AD was prompted by the discovery of incorrect indicated airspeed when the helicopter was tested to the cold temperature limits (−40 degrees centigrade) required for Category A operations. The actions of this AD are intended to correct the published Vne and to correct the indicated airspeed.

DATES: This AD is effective May 23, 2013.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mark F. Wiley, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, fax (817) 222–5110, email *mark.wiley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On October 22, 2012, at 77 FR 64439, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Bell Model 430 helicopters. That NPRM proposed to require replacing certain components of the air data system. The proposed requirements were intended to correct the published Vne and to correct the indicated airspeed.

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD No. CF–2005–30, dated August 3, 2005, to correct an unsafe condition for the Bell Model 430 helicopters. Discrepancies in the processing and display of air data were revealed when testing at low temperatures to minus 40 degrees Centigrade (−40°C). The TCCA advises that modification to the instrumentation is required to reflect the Vne airspeed values tested at temperatures to −40°C. The TCCA states ''This modification affects the software in the Vne Overspeed Warning computer (required for Category A operations) and in the AFCS [Automatic Flight Control System] Air Data Computer.'' TCAA issued AD CF–2005–30 to require the procedures in Bell Alert Service Bulletin (ASB) No. 430–05–35, dated June 21, 2005, for replacing the affected instruments. Bell also issued ASB No. 430–01–22, dated April 30, 2001 (ASB 430–01–22), which provided a temporary Rotorcraft Flight Manual Supplement and placards with information on airspeed corrections. TCCA did not issue an AD to mandate the provisions of ASB 430–01–22.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 64439, October 22, 2012).

FAA's Determination

These helicopters have been approved by the TCCA and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCCA has notified us of the unsafe condition described in the Canadian AD.

We are issuing this AD because we evaluated all information provided by TCCA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the TCCA AD

We do not use the compliance date of July 31, 2007.

Costs of Compliance

We estimate that this AD will affect 52 helicopters of U.S. registry. We estimate that operators may incur the following costs in order to comply with this AD:

- $680 to replace the overspeed warning computer, pilot and copilot airspeed indicators, Vne converter, and AFCS air data computer adapter module for each helicopter, assuming 8 work hours for each helicopter at an average labor rate of $85 per work hour, and
- $46,074 per helicopter for the required parts.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $2,431,208 for the fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–08–06 Bell Helicopter Textron Canada: Amendment 39–17423; Docket No. FAA–2012–1127; Directorate Identifier 2010–SW–035–AD.

(a) Applicability

This AD applies to Model 430 helicopters: serial number (S/N) 49001 through 49103, with Overspeed Warning Kit, part number (P/N) 430–706–004–101 or P/N 430–706–004–103, installed; S/N 49001 through 49100, with Single Automatic Flight Control System (AFCS) with Flight Director Kit, P/N 430–705–009–103, –105, –109, –111, –115, –117, or P/N 430–705–011–109, –111, –121, or –123, installed; and S/N 49001 through 49100, with Dual AFCS with Flight Director Kit, P/N 430–705–011–103, –105, –115, –117, –125, –127, –129, –133, –135, or –137, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as inability of the helicopters, based on testing, to operate at the published V_{ne} indicated airspeeds within the cold temperature limits (−40 degrees centigrade) required for Category A operations.

(c) Effective Date

This AD becomes effective May 23, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 1 year:

(1) For helicopters with an Overspeed Warning System, replace the Overspeed Warning Computer, P/N 430–375–013–103, with the Overspeed Warning Computer, P/N 430–375–013–105; the V_{ne} Converter, P/N ADI–21280–000, with the V_{ne} Converter, P/N ADI–21280–100; and the pilot and copilot Airspeed Indicator, P/N 222–375–027–117, with the pilot and copilot airspeed Indicator, P/N 222–375–027–119;

(i) If installed, remove the decal, P/N 430–075–070–103, from below the pilot and copilot airspeed indicators;

(ii) Leak test the pilot pitot static system; and

(iii) Operationally test the overspeed warning system.

(2) For helicopters with a Single or Dual AFCS with a Flight Director, replace the AFCS Air Data Computer Adapter Module, P/N 065–05041–0021, with P/N 065–05041–0031;

(i) If installed, remove the decal, P/N 430–075–070–101, from above the pilot and copilot electronic attitude direction indicators airspeed indicators;

(ii) Leak test the pilot pitot static system;

(iii) Power-up test the altimeter/vertical speed indicator (ALT/VSI) and self-test the ALT/VSI of the AFCS air data computer.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Rotorcraft Standards Staff, FAA may approve AMOCs for this AD. Send your proposal to: Mark F. Wiley, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, fax (817) 222–5961, email *mark.wiley@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Bell Helicopter Textron Alert Service Bulletin (ASB) No. 430–05–35, dated June 21, 2005, and ASB No. 430–01–22, dated April 30, 2001, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or *http://www.bellcustomer.com/files/.* You may review the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation AD No. CF 2005–30, dated August 3, 2005.

(h) Subject

Joint Aircraft System/Component Code: 3417 Air Data Computer.

Issued in Fort Worth, Texas, on April 8, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–08762 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9616]

RIN 1545–BK05; RIN 1545–BL47

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to reporting by brokers for transactions involving debt instruments and options. These final regulations reflect changes in the law made by the Energy Improvement and Extension Act of 2008 that require brokers when reporting the sale of securities to the IRS to include the customer's adjusted basis in the sold securities and to classify any gain or loss as long-term or short-term. These final regulations also implement the requirement that a broker report gross proceeds from a sale or closing transaction with respect to certain options. In addition, this document contains final regulations that implement reporting requirements for a transfer of a debt instrument or an option to another broker and for an organizational action that affects the basis of a debt instrument or an option. Moreover, this document contains final regulations relating to the filing of Form 8281, ''Information Return for Publicly Offered Original Issue Discount Instruments,'' for certain debt instruments with original issue discount and temporary regulations relating to information reporting for premium. The text of the temporary regulations in this document also serves as the text of the proposed regulations (REG–154563–12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on April 18, 2013.

Applicability Dates: For dates of applicability, *see* §§ 1.1275–3(c)(4), 1.6045–1(a)(15)(i)(C) through 1.6045–1(a)(15)(i)(F), 1.6045–1(a)(18), 1.6045–1(c)(3)(vii)(C) and (D), 1.6045–1(c)(3)(x), 1.6045–1(c)(3)(xiii), 1.6045–1(d)(2), 1.6045–1(d)(5), 1.6045–1(d)(6)(ii)(A), 1.6045–1(m), 1.6045–1(n), 1.6045A–1(d), 1.6045B–1(j), and 1.6049–9T(a).

FOR FURTHER INFORMATION CONTACT: Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations related to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2186. The collection of information in these final regulations in §§ 1.6045–1(c)(3)(xi)(C) and 1.6045A–1 is necessary to allow brokers that effect sales of transferred covered securities to determine and report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term in compliance with section 6045(g) of the Internal Revenue Code (Code). This collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)) (the Act).

In addition, the collection of information contained in § 1.6045–1(n)(5) of these final regulations related to the furnishing of information in connection with the sale or transfer of a debt instrument that is a covered security is an increase in the total annual burden under control number 1545–2186. Under section 6045(g), a broker is required to determine and report the adjusted basis upon the sale or transfer of a debt instrument that is a covered security. If a sale has occurred, a broker must also determine and report whether any gain or loss with respect to the debt instrument is long-term or short-term in compliance with section 6045(g). The holder of a debt instrument is permitted to make a number of elections that affect how basis is computed. To minimize the need for reconciliation between information reported by a broker to both a customer and the IRS and the amounts reported on the customer's tax return, a broker is required to take into account certain specified elections in reporting information to the customer. A customer, therefore, must provide certain information concerning an election to the broker in a written notification, which includes a writing in electronic format. The adjusted basis information will be used for audit and examination purposes. The likely respondents are recipients of Form 1099–B.

Estimated total annual reporting burden is 1,417 hours.

Estimated average annual burden per respondent is 0.12 hours.

Estimated average burden per response is 7 minutes.

Estimated number of respondents is 11,500.

Estimated total frequency of responses is 11,500.

This collection of information is required to comply with the provisions of section 403 of the Act.

The burden for the collection of information contained in the amendment to § 1.1275–3 will be reflected in the burden on Form 8281, ''Information Return for Publicly Offered Original Issue Discount Instruments,'' when revised to request the additional information in the regulations. The burden for the collection of information contained in the other amendments to § 1.6045–1 will be reflected in the burden on Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' when revised to request the additional information in the regulations. The burden for the collection of information contained in the amendments to § 1.6045B–1 will be reflected in the burden on Form 8937, ''Report of Organizational Actions Affecting Basis of Securities,'' when revised to request the additional information in the regulations. The burden for the collection of information contained in § 1.6049–9T will be reflected in the burdens on Form 1099–INT and Form 1099–OID when revised to request the additional information in the regulations. The information described in this paragraph is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses or deductions.

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.

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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting by brokers and others as required by section 6045 of the Code. This section was amended by section 403 of the Act to require the reporting of adjusted basis for a covered security and whether any gain or loss upon the sale of the security is long-term or short-term if gross proceeds reporting is required with respect to such security. The Act also requires the reporting of gross proceeds for an option that is a covered security. In addition, the Act added section 6045A, which requires certain information to be reported in connection with a transfer of a covered security to another broker, and section 6045B, which requires an issuer of a specified security to file a return relating to certain actions that affect the basis of the security. Final regulations under these provisions relating to stock were published in the **Federal Register** on October 18, 2010, in TD 9504 (the 2010 final regulations).

On November 25, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 72652) proposed regulations (REG–102988–11) relating to information reporting by brokers, transferors, and issuers of securities under sections 6045, 6045A, and 6045B for debt instruments and options. Written and electronic comments responding to the notice of proposed rulemaking were received and are available for public inspection at *http://www.regulations.gov* or upon request. A public hearing was held on March 16, 2012.

After considering the comments, the Treasury Department and the IRS adopt the proposed regulations as amended by this Treasury decision. The comments and revisions are discussed in this preamble.

Summary of Comments

A. Effective Dates and Penalty Relief

The proposed regulations had a proposed effective date for both debt instruments and options of January 1, 2013. The Treasury Department and the IRS received numerous requests to delay the proposed effective dates for both debt instruments and options. Brokers and other interested parties maintained that the proposed effective date of January 1, 2013, did not provide them sufficient time to build and test the systems required to implement the reporting rules for debt instruments and options. In response to these requests, Notice 2012–34 (2012–21 I.R.B. 937) was issued to announce that the effective dates in the final regulations would be postponed to January 1, 2014.

A number of commenters also requested relief related to various aspects of reporting under sections 6045, 6045A, and 6045B. One commenter requested a 36-month general penalty relief period to allow brokers to test and refine their reporting systems.

In response to these comments, as was announced in Notice 2012–34, the effective date of these final regulations is postponed so that basis reporting is required for debt instruments and options no earlier than January 1, 2014. Moreover, these final regulations implement the reporting requirements for debt instruments in phases, as described in more detail later in this preamble. These final regulations also implement transfer reporting in phases. These features of the regulations are intended to give brokers ample time to develop and implement reporting systems.

Another commenter requested a safe-harbor for good faith reliance upon debt instrument data that is provided by third-party vendors for purposes of both basis and transfer reporting. With respect to information from third-party vendors, §§ 1.6045–1(d)(2)(iv)(B) and 1.6045A–1(b)(8)(ii) of the 2010 final regulations provide that a broker is deemed to rely upon the information provided by a third party in good faith if the broker neither knows nor has reason to know that the information is incorrect (§ 1.6045A–1(b)(8)(ii) is redesignated in these final regulations as § 1.6045A–1(b)(11)(ii)). Therefore, because the 2010 final regulations already address the concerns raised by these comments, no change on this issue is needed in these final regulations.

Several commenters requested a safe-harbor for purposes of both basis and transfer reporting for good faith reliance upon information received on a section 6045A transfer statement. With respect to basis reporting, § 1.6045–1(d)(2)(iv)(A) of the 2010 final regulations provides for penalty relief if a broker relies upon transferred information when preparing a return under section 6045. With respect to transfer reporting, § 1.6045A–1(b)(8)(i) of the 2010 final regulations (redesignated in these final regulations as § 1.6045A–1(b)(11)(i)) provides for penalty relief if a broker relies upon transferred information when preparing a transfer statement under section 6045A. Because the 2010 final regulations already address the concerns raised by these comments, no change on this issue is needed in these final regulations.

B. Debt Instruments

1. Scope of Debt Instrument Reporting and Phased Implementation

The proposed regulations required basis reporting for all debt instruments, other than a debt instrument subject to section 1272(a)(6) (in general, a debt instrument with principal subject to acceleration). Numerous commenters requested that the final regulations narrow the scope of basis reporting for debt instruments. Many commenters requested permanent exemptions from basis reporting for debt instruments that the commenters believe present data collection or computational difficulties, including convertible debt instruments, debt instruments denominated in non-U.S. dollar currencies, contingent payment debt instruments, variable rate debt instruments, municipal obligations, tax credit bonds, payment-in-kind (PIK) bonds, certificates of deposit, debt instruments issued by foreign persons, U.S. Treasury strips and other stripped debt instruments, inflation-indexed debt instruments, privately placed debt instruments, commercial paper, hybrid securities, investment units, debt instruments subject to put or call options, debt instruments with stepped interest rates, factored bonds, and short-term debt instruments. Alternatively, some commenters suggested that basis reporting be deferred for debt instruments until data is more readily available for some of the instruments described in the preceding sentence. One commenter renewed a request for exempting corporate trustees from basis reporting for registered debt instruments issued in a physical form. Some commenters asked for a permanent exemption or deferred reporting for debt instruments because, unlike the rules for equity, there are numerous rules in the Code and regulations, including holder elections, that affect the adjusted basis of a debt instrument, such as the rules relating to original issue discount (OID), bond premium, market discount, and acquisition premium.

Several commenters requested that the final regulations provide a specific list of the debt instruments subject to basis reporting rather than a list of the debt instruments not subject to basis reporting. Other commenters suggested limiting basis reporting to a debt instrument that has a fixed yield and fixed maturity date. One commenter indicated that fixed yield, fixed maturity date debt instruments comprise approximately 90% of the reportable debt instrument transactions.

Section 6045(g) by its terms requires basis reporting by brokers with respect to any note, bond, debenture, or other evidence of indebtedness that is a covered security. After consideration of the comments, however, the Treasury Department and the IRS appreciate that the proper implementation of broker basis reporting for debt instruments will require time to build and implement reporting systems, especially for debt instruments with more complex features. Thus, to facilitate an orderly transition to basis reporting for debt instruments, these final regulations implement basis reporting for debt instruments in phases.

For a debt instrument with less complex features, these final regulations require basis reporting by a broker if the debt instrument is acquired on or after January 1, 2014, consistent with Notice 2012–34. This category of less complex debt instruments includes a debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined for the instrument under § 1.1272–1(b), a debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined for the instrument under § 1.1272–1(c) (such as a debt instrument with an embedded put or call option), and a demand loan for which a yield can be determined under § 1.1272–1(d). Commenters requested delayed reporting for any debt instrument with an embedded put or call option. The Treasury Department and the IRS believe that brokers should be able to implement reporting for a debt instrument with an embedded option that entitles the issuer to call or the holder to put the debt instrument prior to its scheduled maturity. Moreover, because an embedded put or call option is a common feature of debt instruments, delaying basis reporting for debt instruments with such a feature could delay basis reporting for an unduly large proportion of debt instruments.

Some debt instruments with a fixed yield and a fixed maturity date nevertheless pose challenges for information reporting. For these debt instruments and for more complex debt instruments that do not have a fixed yield and a fixed maturity date, these final regulations require basis reporting for debt instruments acquired on or after January 1, 2016. The Treasury Department and the IRS believe that brokers may need additional time to implement basis reporting for these debt instruments because of their more complex features or the lack of public information for the debt instruments. Fixed yield, fixed maturity debt instruments that are subject to reporting if they are acquired on or after January 1, 2016, include a debt instrument that provides for more than one rate of stated interest (such as a debt instrument with stepped interest rates), a convertible debt instrument, a stripped bond or coupon, a debt instrument that requires payment of either interest or principal in a non-U.S. dollar currency, certain tax credit bonds, a debt instrument that provides for a PIK feature, a debt instrument issued by a non-U.S. issuer, a debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer, a debt instrument that is issued as part of an investment unit, and a debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization described in § 1.1471–1(b)(18). Other debt instruments that do not have a fixed yield and fixed maturity date but are subject to reporting if they are acquired on or after January 1, 2016, include a contingent payment debt instrument, a variable rate debt instrument, and an inflation-indexed debt instrument.

As noted earlier in this preamble, due to the difficulties in implementing basis reporting, the proposed regulations provided that a debt instrument described in section 1272(a)(6) (in general, a debt instrument with principal subject to acceleration) would not be subject to basis reporting. In response to favorable comments on this exception, these final regulations retain this exception from basis reporting.

A number of commenters requested delayed reporting or no basis reporting for short-term debt instruments (that is, debt instruments with a fixed maturity date not more than one year from the date of issue). One commenter argued that the application of the OID, bond premium, market discount, and acquisition premium rules to a short-term debt instrument, including the numerous elections applicable to short-term debt instruments, is complicated, that the effects on the basis of a short-term debt instrument would be marginal, and that basis reporting for short-term debt instruments may impose a significant burden on brokers and provide little benefit to taxpayers or the IRS. Because the Treasury Department and the IRS agree with this comment, these final regulations except short-term debt instruments from basis reporting.

Another commenter requested that the rules pertaining to short-term debt instruments be extended to all debt instruments that are acquired with a remaining term of one year or less. This exemption from information reporting would apply to a debt instrument originally issued with a term of greater than one year and acquired in a secondary market purchase when there is a remaining term of one year or less. The request to extend the short-term debt instrument rules to a long-term debt instrument with one year or less until maturity is not adopted because the rules that govern a debt instrument with a term over one year do not change when the maturity has declined to one year or less. While the potential for significant gain or loss on the debt instrument usually diminishes in the final year, the reporting is useful to the customer and the IRS, and all information required for reporting will be available to the broker.

One commenter requested that the final regulations exempt from reporting securities issued in connection with a bankruptcy restructuring because it is not always clear if a particular security is a debt instrument. After consideration of the comment, this request was not adopted because these final regulations provide that a security is treated as debt for reporting purposes only if the issuer has classified the security as debt or, if the issuer has not classified the security, if the broker knows that the security is reasonably classified as debt under general Federal tax principles.

2. Lack of Industry Consistency Could Affect Reporting

A number of commenters raised concerns and suggestions about how to make reporting more consistent, both between transferring and receiving brokers and between brokers and customers. Many commenters expressed a strong desire to ensure that a customer who transfers a security from one broker to another will receive consistent reporting from the two brokers. Many commenters also asked for assistance in minimizing the amount of potential reconciliation between an amount reported by a broker to a customer and the IRS and the amount reported by that customer on a tax return.

a. Support of Taxpayer Elections

The proposed regulations attempted to simplify reporting requirements by specifying the elections brokers were to assume to compute OID, market discount, bond premium, and acquisition premium reported to holders, and not permitting brokers to support alternative customer elections. A number of commenters, however, indicated a desire by brokers to support debt instrument elections made by their customers rather than rely on assumptions provided in the regulations. Some commenters stated that they already support some or all elections for debt as a service to their customers, and these commenters predict that similar customer service demands will eventually require all brokers to support customer elections, just as they support customer elections with respect to stock. Other commenters pointed out that the default assumptions in the proposed regulations might be preferred by most individual taxpayers, but other customers, such as trusts or partnerships, might not prefer the default assumptions. One commenter noted that the reporting rules provided in the proposed regulations would make computations by brokers simpler, but that educating customers about permissible elections, and the computations that each election would entail if an election is made, would become critical. This commenter recommended permitting a broker to support customer elections in the future as systems are upgraded.

However, other commenters indicated that some of the statutory defaults were generally simpler to apply and produced economic results that were only negligibly different than the defaults prescribed by the proposed regulations. For example, while the proposed regulations would have required reporting of market discount using a constant yield method, several commenters indicated a preference for reporting accrued market discount using a straight line method.

The Treasury Department and the IRS also received comments regarding the treatment of amortizable bond premium under section 171. One commenter requested that the section 171 election not be mandatory for reporting purposes because most taxpayers have not made the election, but suggested that a broker be required to support the section 171 election if a customer informs the broker that the election was or will be made.

After consideration of all the comments, the Treasury Department and the IRS have concluded that the best way to balance certainty and flexibility is to require brokers to report information using the default assumptions provided in the relevant statute and regulations, except in the case of the section 171 election, but to require brokers to accommodate elections by taxpayers that choose to depart from the defaults. Under these final regulations, upon written notification by a customer, a broker must take into account the following elections for basis reporting purposes: the election to accrue market discount using a constant yield; the election to include market discount in income currently; the election to treat all interest as OID; and the spot rate election for interest accruals with respect to a covered debt instrument denominated in a currency other than the U.S. dollar. The Treasury Department and the IRS do not anticipate that many taxpayers will make these elections. As a practical matter, by removing short-term debt instruments from the basis reporting rules, the number of elections available for a covered security has been reduced to a manageable number, and it is reasonable to require that the remaining debt instrument elections be supported.

These final regulations make an exception to the general rule requiring brokers to use the default elections provided in the statute and regulations in the case of bond premium. Section 171 generally requires taxpayers to affirmatively elect to amortize bond premium on taxable bonds, which then offsets interest income on the bond. Except in the rare case of a holder that prefers a capital loss, the election to amortize bond premium generally will benefit the holder of a debt instrument. Thus, consistent with the proposed regulations, these final regulations require brokers to assume that customers have made the election to amortize bond premium provided in section 171 when reporting basis, unless the customer has notified the broker otherwise.

The rules regarding basis reporting for bond premium in the proposed regulations prompted a number of commenters to request that the rules for reporting interest income associated with a bond acquired at a premium be conformed to the rules regarding basis reporting for these same debt instruments. In response to these commenters, this document contains temporary regulations addressing reporting of premium under section 6049. See Part H of this preamble for additional discussion of this issue.

The Treasury Department and the IRS considered making broker support of debt instrument elections a permitted, but not required, activity, but the additional administrative problems that can arise if a transferring broker supports certain elections while the receiving broker does not support the same elections made a permissive approach problematic. For example, if the receiving broker did not support the same elections as the transferring broker, and the customer properly made one of the elections permitted with respect to a debt instrument and notified the transferring broker of the election, the information provided by the receiving broker on the relevant Form 1099 would not reflect the customer's election, requiring the customer to provide a reconciliation on the customer's income tax return. These administrative problems lead to the conclusion that brokers should be required to support either all of the permitted elections for debt instruments or none of them. Given the numerous requests to support customer elections, coupled with requests to reduce the need for a customer to reconcile tax return data to the data provided by a broker, the Treasury Department and the IRS decided that support for customer debt instrument elections would be beneficial to taxpayers and would not impose an undue burden on brokers. It should be noted that supporting customer elections will require additional transfer statement information to advise a receiving broker of any elections that were used to compute the information provided.

b. Industry Conventions

Several commenters pointed out that brokers do not necessarily use common terms or conventions for debt instrument computations. For example, 30 days per month/360 days per year, actual days per month/360 days per year, and actual days per month/365 days per year are possible interest computation day count conventions. Different brokers may use different amortization and accretion assumptions, different accrual periods, and different rounding conventions.

The proposed regulations prescribed conventions to determine the accrual period to be used for reporting purposes. These final regulations generally adopt the conventions in the proposed regulations. Under these final regulations, a broker must use the same accrual period that is used to report OID or stated interest to a customer under section 6049. In any other situation, a broker is required to use a semi-annual accrual period unless the debt instrument provides for scheduled payments of principal or interest at regular intervals of less than six months over its term, in which case a broker must use an accrual period equal in length to this shorter interval. In response to a comment, these final regulations use a semi-annual accrual period rather than an annual accrual period as the default accrual period.

These final regulations do not prescribe a particular day count convention brokers must use for basis reporting. Instead, these final regulations provide that a broker may use any reasonable day count convention. The terms of a debt instrument, however, generally include the day count convention that the issuer will use to compute interest payments. The Treasury Department and the IRS expect that a broker generally will choose to use this day count convention to determine the accruals of interest and OID on the debt instrument and the related basis adjustments, which will facilitate reconciliation of the accruals with the amount of cash received by a broker and distributed to a customer. These final regulations also do not prescribe a particular rounding convention.

Commenters also indicated disagreement on the effect of puts and calls on calculations associated with a debt instrument. One commenter asked for clarification about whether issuer choice or holder choice will govern the treatment of put and call dates and recommended amortizing all callable debt instruments to their maturity dates rather than call dates. Another commenter requested standardizing the deemed maturity date and limiting the application of the put/call rules to cases in which the broker has actual knowledge of payment terms that could result in a different maturity date if the put/call rules are applied.

These final regulations continue the approach taken in the proposed regulations. The basis reporting rules are not intended to, and do not, change the substantive rules applicable to debt instruments. Thus, when assessing the effect of an embedded put or call option on a debt instrument, a broker must apply the rules described in § 1.1272–1(c)(5) or § 1.171–3(c)(4), whichever is applicable, to determine the correct date to be used in accrual calculations. The rules described in § 1.1272–1(c)(5) have been in effect since 1994 and the rules described in § 1.171–3(c)(4) have been in effect since 1997. Both rules provide a clear and workable framework for determining the effect, if any, of an embedded put or call option on a debt instrument.

One commenter requested that, to the extent brokers are not required to report using a single set of assumptions and computation conventions, explicit language should be added to the regulations covering transfer statements to require transfer of all information needed for a receiving broker to compute adjustments in a manner consistent with the transferor broker, including payment terms and assumptions used by the transferor broker, as well as any taxpayer elections that were supported by the transferor broker. These final regulations adopt this comment by expanding the information that must be included in a transfer statement for a debt instrument.

3. Other Issues

One commenter stated that there could be problems tracking the adjustments for discount and premium if different measurement periods are used (for example, a daily period versus a period ending on payment dates), especially for a customer that has purchased debt from the same issue at a discount and at a premium. The commenter indicated that tracking OID, market discount, bond premium, and/or acquisition premium adjustments for multiple lots of a single issue will be complex.

One commenter, noting that reporting to the IRS and taxpayers is only required once a year, asked whether a duty exists to compute the debt instrument accruals and display them more frequently than once each year, such as for each accrual or payment period. Another commenter indicated that to facilitate the preparation of transfer statements at any time during a year, it may be necessary to compute all debt instrument accruals each day.

These final regulations generally continue the approach taken in the proposed regulations regarding computations that affect the basis of a debt instrument. In particular, these final regulations do not require a broker to compute debt instrument accruals more than once per year unless a transfer takes place during a tax year, in which case the transferring broker must provide a transfer statement to the receiving broker. If a broker's systems generate more frequent computations to support transfer statements, the broker is permitted to compute the accruals more than once per tax year.

The proposed regulations require accrued market discount to be reported upon the sale of a debt instrument. One commenter asked whether accrued market discount should be reported at the time of a call or at maturity. The commenter also noted that two rules in the proposed regulations relating to market discount may have required the filing of a Form 1099–INT and a Form 1099–B to report accrued market discount. The commenter recommended that accrued market discount be reported only on a Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' and associated with a specific sale.

For purposes of section 6045, § 1.6045–1(a)(9) defines a sale to include any disposition of a debt instrument, which includes a retirement of a debt instrument at or prior to its stated maturity. These final regulations do not change this definition of a sale with respect to a debt instrument; however, these final regulations clarify that a sale for purposes of section 6045 includes a partial principal payment. Moreover, under these final regulations, in the case of a sale, accrued market discount will be reported only on the Form 1099–B, which would associate the accrued market discount with a specific sale of a single security. In connection with this comment, these final regulations amend the rule in § 1.6045–1(d)(3) for reporting accrued stated interest on a Form 1099–INT when a debt instrument is sold between interest payment dates to make it clear that the rule does not apply to accrued market discount.

A number of comments were received that address narrower issues. One commenter requested guidance about how to determine and translate interest income or expense (including OID) on certain non-functional currency debt. Rules regarding the determination and translation of interest income and expense on certain debt instruments denominated in a non-functional currency are explicitly addressed in the regulations under section 988. *See,* for example, § 1.988–2(b).

During the preparation of these final regulations, the Treasury Department and the IRS reviewed the existing reporting requirements for short-term debt instruments. Based on this review, these final regulations exempt from gross proceeds reporting all short-term debt instruments. This exemption is consistent with the existing exemption from reporting for certain short-term debt instruments in § 1.6045–1(c)(3)(vii)(C), and the provisions in these final regulations that exempt short-term debt instruments from basis reporting. Moreover, almost all income related to short-term debt instruments is captured through the income reporting rules under section 6049 and any capital gain or loss related to a short-term debt instrument is expected to be very small.

C. Comments on Option Transactions

1. Scope of Option Reporting

In general, under the proposed regulations, basis and gross proceeds reporting applied to the following options granted or acquired on or after January 1, 2013: an option on one or more specified securities, including an option on an index substantially all the components of which are specified securities; an option on financial attributes of specified securities, such as interest rates or dividend yields; and a warrant or a stock right on a specified security. The scope provisions in these final regulations are generally the same as the scope provisions in the proposed regulations, except that these final regulations explicitly exclude a compensatory option. As announced in Notice 2012–34, these final regulations generally apply to an option granted or acquired on or after January 1, 2014.

One commenter asked for clarification of the concept of ''financial attributes'' in the scope provision. After reviewing the proposed language, the Treasury Department and the IRS believe that the list of items provided in § 1.6045–1(m)(2)(i)(B) provides adequate detail to describe the concept.

Commenters also requested that the regulations not apply to options that are subject to section 1256. As explained immediately below, this comment was not adopted in these final regulations.

2. Option Transactions Subject to Section 1256

Numerous comments were received related to nonequity options that are covered by section 1256(b)(1)(C) (''section 1256 options''), which includes a listed option on a stock index that is not a narrow-based security index. Several commenters noted that the substantive rules that apply to section 1256 options are different from the rules that apply to non-section 1256 options and asked for different reporting treatment for the two types of options. Some commenters requested an exemption from reporting for all section 1256 options. The commenters suggested that if a blanket exemption from reporting is not provided, the IRS should consider extending the reporting rules for regulated futures contracts described in § 1.6045–1(c)(5) to section 1256 options. One commenter noted that although the current rules only require reporting for regulated futures contracts on Form 1099–B, some brokers may already be reporting section 1256 options in a similar manner.

The Treasury Department and the IRS agree that there should be different reporting rules for section 1256 options and non-section 1256 options. In general, an option is subject to reporting under section 6045 only if the option references one or more specified securities. For a nonequity option described in section 1256(b)(1)(C) on one or more specified securities, a broker will apply the reporting rules that apply to a regulated futures contract, which are described in § 1.6045–1(c)(5). For an option on one or more specified securities that is not described in section 1256(b)(1)(C), a broker will report gross proceeds and basis in accordance with the rules in these final regulations for a non-section 1256 option, which are described later in this preamble.

a. Scope Issues Related to Section 1256 Options

A number of comments focused on potential difficulties in distinguishing between an option on a broad-based index, which would be covered by section 1256, and an option on a narrow-based index, which would be treated in the same manner as an option on a single equity. Commenters requested guidance about how to determine whether an index is broad-based or narrow-based, and some commenters requested that the IRS annually publish a list of what constitutes a section 1256 option. Alternatively, the commenters requested complete exclusion of all stock index options. These final regulations do not provide substantive rules on index options. Rather, to determine whether an index substantially all the components of which are specified securities is a broad-based index under section 1256(g)(6)(B), a broker must look to rules established by the Securities Exchange Commission and the Commodities Futures Trading Commission that determine which regulator has jurisdiction over an option on the index. An option on a broad-based index is a nonequity option described in section 1256(b)(1)(C).

Several commenters requested broker penalty relief for good faith determinations of section 1256 status for index options. The Treasury Department and the IRS appreciate the difficulty in making determinations of section 1256 status. Therefore, these final regulations grant relief under sections 6721 and 6722 if a broker determines in good faith that an index is, or is not, a narrow-based index described in section 1256(g)(6) and reports in a manner consistent with that determination.

One commenter asked for an exemption from basis reporting for options on foreign currency and suggested that foreign currency be treated as a commodity. Because commodities and foreign currency are not specified securities, basis reporting by a broker for an option on foreign currency or an option on a commodity is not currently required under section 6045. Accordingly, no change is made in these final regulations in response to this comment.

b. Other Issues Related to Section 1256 Options

A number of commenters asserted that neither the wash sale rules under section 1091 nor the short sale rules described in section 1233 should apply to a section 1256 option. One commenter asked for clarification about how holding period adjustments due to application of the wash sale provisions should be applied to section 1256 options. These comments have not been adopted because the changes requested are substantive in nature and outside the scope of the reporting rules.

3. Non-Section 1256 Options

Comments were also received on the rules in the proposed regulations relating to non-section 1256 options. Several commenters asserted that there are administrative issues involved in reporting over-the-counter (OTC) options and asked that OTC options be exempted from reporting. One commenter suggested that if exemptions were not granted, the IRS should create a ''best efforts'' safe harbor for OTC options. The Treasury Department and the IRS believe that it is reasonable to expect a broker to know the information required to report on an OTC option when it is entered into or when it is transferred into a customer's account. Moreover, the regulations under section 6045A require the transferor of an OTC option to provide detailed information to a receiving broker sufficient to describe the option. This could include data about the underlying asset, contract size, non-standardized strike price, and expiration date. These final regulations therefore apply to any OTC option on a specified security.

For a cash settled non-section 1256 option, the proposed regulations required a broker to adjust gross proceeds related to an option transaction by increasing gross proceeds by the amount of any payments received for issuing the option and decreasing gross proceeds by the amount of any payments made on the option. A number of commenters requested that, instead of decreasing gross proceeds by amounts paid out, brokers be permitted to report gross amounts paid and received with respect to the option. Under this approach, the gross proceeds box on Form 1099–B would include all payments received, and the basis box on Form 1099–B would reflect any payments made. These commenters noted that some broker systems already deal with equity options this way. This suggestion has not been adopted because it is not consistent with the overall concept of gross proceeds and basis reporting, which applies to all covered securities. The rules in these final regulations for a cash settled option are based upon the basic idea that costs related to the acquisition of a position affect basis, while the costs related to the sale or closeout of a position affect gross proceeds. This is consistent with the changes to the definition of gross proceeds in the proposed regulations.

Under these final regulations, expenses related to the sale of an asset must be deducted from gross proceeds and may not be added to basis. For a purchased option, the basis in the option will include the premium paid as well as any commissions, fees, or other transaction costs related to the purchase. Gross proceeds on the cash settlement of the purchased option should be adjusted to account for any commissions, fees, or other transaction costs related to the cash settlement. In the case of a written option, a broker must determine the amount of reportable proceeds by subtracting from the amount of the premium received for writing the option any settlement payments, commissions, or other costs related to the close out or cash settlement. At the suggestion of several commenters, a clarification has been added that the basis under this scenario should be reported as $0.

One commenter requested that for cash-settled options, acquisition costs be treated as adjustments to gross proceeds and that no adjustments be made to basis for acquisition costs. This comment has not been adopted because it is contrary to the requirements of § 1.263(a)-4(c), which require that acquisition costs be treated as part of basis.

One commenter requested that if multiple option contracts are bundled into a single investment vehicle and the components cannot be separately exercised, the investment will be treated as a single instrument with a single basis. These final regulations do not adopt this comment because the basis of each financial instrument is required to be accounted for separately.

Another commenter asked that the regulations explicitly address whether a broker must take into account the straddle rules under section 1092, including the qualified covered call rules in section 1092(c)(4). Consistent with the approach taken for broker basis reporting for stock, these final regulations explicitly provide that a broker will not take section 1092 into consideration when determining basis of an option that is a covered security.

Several comments were received asking for guidance in determining which options would be considered substantially identical for the purpose of applying the wash sale rules under section 1091. The 2010 final regulations only require a broker to apply the wash sale rules when the transaction involves covered securities with the same CUSIP number, and these final regulations do not change this rule.

4. Stock Acquired Through the Exercise of a Compensatory Option

The proposed regulations provided that a broker was permitted, but not required, to increase a customer's initial basis in stock for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangement. The preamble to the proposed regulations also stated that the IRS might add a field to Form 1099–B to indicate when stock was acquired via the exercise of a compensatory option. In response, commenters asked that there be no change to the Form 1099–B to reflect compensation status or, alternatively, that using the indicator be permitted, but not required. These commenters indicated that compensation information is not accessible to most brokers, and extensive reprogramming for both the underlying database and the reporting process would be required. The commenters also expressed concerns that, in many situations, a broker would have to accept customer-provided information in order to track the compensation-related status.

After consideration of the comments, the Treasury Department and the IRS agree a compensation-related field should not be added to the Form 1099–B. The lack of a mechanism to communicate whether the basis of stock has been adjusted for the exercise of a compensatory option coupled with a system involving discretionary broker adjustments for compensatory options would, however, be unworkable. Therefore, these final regulations provide that brokers are not permitted to adjust basis to account for the exercise of a compensatory option that is granted or acquired on or after January 1, 2014. This approach will eliminate confusion and uncertainty for an employee who has exercised a compensatory option. Under the permissive adjustment rule in the proposed regulations, without an indicator on Form 1099–B, an employee would not necessarily know whether the basis of the stock acquired through the exercise of a compensatory option had been adjusted by a broker to account for any income recognized by the employee due to the option exercise. By prohibiting adjustment by a broker, an employee will know that the basis number reported by the broker only reflects the strike price paid for the stock and that a basis adjustment may be necessary to reflect the full amount paid by the employee.

5. Backup Withholding for Option Transactions

One commenter asked for guidance on how to implement backup withholding for option transactions. In particular, the commenter asked for clarification about whether a rule similar to § 31.3406(b)(3)–2(b)(4) applies, permitting a broker to withhold at either the time of sale or upon a closing transaction or lapse. The commenter also asked how to apply backup withholding to several situations involving physically settled options or when the taxpayer transfers an option or ends up closing out an option transaction at a loss. This comment is not adopted because backup withholding rules are outside the scope of these final regulations.

6. Stock Rights and Warrants Under Sections 305 and 307

Several commenters requested that stock rights and warrants be excluded from basis reporting. Several other commenters addressed issues under sections 305 and 307. One commenter pointed out some administrative problems with the taxpayer election to allocate basis under section 307, including the fact that the election to allocate basis can be made after a broker's Form 1099–B reporting window closes. This commenter recommended requiring basis adjustments to reflect the issuance of stock rights or warrants only when section 307 requires allocation of basis because the value of the stock right or warrant represents 15% or more of the fair market value of the old stock. Another commenter noted that distributions of stock rights or warrants representing 15% or more of the value of the old stock are uncommon and recommended that brokers should not make an adjustment for the effects of section 307.

One commenter requested a clarification of the rules for a stock right or warrant that terminates other than by exercise or actual sale, so that a closing transaction that results in $0 proceeds is not a sale subject to reporting on a Form 1099–B. The commenter was concerned that in many cases a broker would have to report a lapse of a stock right or warrant by reporting $0 as proceeds on the Form 1099–B, even in situations where there is no basis to report.

After consideration of the comments, these final regulations provide that a broker is permitted, but not required, to apply the rules of sections 305 and 307 when reporting the basis of a stock right or warrant or any stock related to a stock right or warrant. This rule will permit the industry to deploy its resources most efficiently. A broker who already supports adjustments under sections 305 and 307 will not need to reprogram its systems, while a broker who does not currently support the adjustments can decide to do so later, or not at all. Note that, under these final regulations, a stock right or a warrant purchased from the original recipient is treated as an option.

D. Other Financial Instruments Subject to Reporting

One commenter asked for an explicit exemption from reporting for single stock futures that fall under section 1234B or for guidance on how to apply section 1234B. This request was not adopted; instead, these final regulations add section 1234B contracts to the definitions of specified security and covered security. The Treasury Department and the IRS believe that there is no reason to exclude single stock futures on a specified security from information reporting when information reporting is generally required on stock, options on stock, and regulated futures contracts.

E. Transfer Reporting Under Section 6045A

Numerous comments were received related to transfer reporting for debt instruments, as required by section 6045A. Many comments focused on the information that was to be included on the transfer statement. Some commenters argued for the transfer of original purchase information related to debt instruments because some brokers will recompute OID, market discount, bond premium, and acquisition premium through the transfer date and will use the recomputed numbers, instead of the numbers provided by the prior broker, to populate their data systems. Other commenters argued that only adjusted basis needs to be transferred to provide for subsequent accrual computations; these commenters point out that some adjustments, such as wash sale loss deferrals and holding period adjustments, will be reported accurately if adjusted basis is reported on a transfer statement, but may not be reflected if basis is recomputed based on original purchase information. Further, to the extent that a transferor broker might have used a computational method that is different from the method used by the receiving broker, as long as each broker is internally consistent in reporting income and adjusting basis, permitting the receiving broker to start from adjusted basis will help ensure that there is no duplication or omission of income and adjustments. Another commenter argued that the market discount, acquisition premium, and bond premium amounts should be implicit in the combination of adjusted issue price and adjusted cost basis, and transfer of the details is not needed. One commenter suggested treating each transfer as though it were a new purchase. This would entail comparing the reported adjusted basis to the adjusted issue price, determining new amounts of bond premium, market discount, or acquisition premium, and then basing all further accruals on these numbers.

After consideration of the comments, the Treasury Department and the IRS believe that brokers and customers are better served when all relevant information is provided when a security is transferred. These final regulations therefore generally require the information specified in the proposed regulations, and have expanded the list of information that must be provided to support the new requirement that a broker support customer debt instrument elections. It is not anticipated that a particular receiving broker will necessarily use all of the information received. For example, if a receiving broker's systems are set up to recompute debt instrument accruals from the issue date, that broker may not find the data for adjusted issue price as of the transfer date to be useful.

Several commenters also expressed concerns about transferring data purchased from third-party vendors. One commenter suggested that communicating the CUSIP identifier for a debt instrument might be sufficient to enable a receiving broker to retrieve information that applies to all debt instruments in a particular issue, such that some of the data described in the proposed regulations might not be necessary. Another commenter argued that data specific to a customer, such as initial purchase price and date, and the CUSIP should provide a receiving broker with all information needed to properly compute debt instrument accruals.

These final regulations, like the proposed regulations, require that a transferor broker provide all information necessary to allow a receiving broker to comply with its information reporting obligations. Consistent with the comments, if providing a CUSIP number or similar security identifier is adequate to enable the receiving broker to obtain some of the required information, a transferring broker is permitted to supply the CUSIP number or security identifier as a substitute for that information. For example, data that applies to all debt instruments in an issue, such as issuer name, issue date, coupon rate, coupon payment dates, or issue price, might be data that could be derived from a CUSIP or other security identifier. However, under these final regulations, like the proposed regulations, a receiving broker may request to receive the information specified in the regulations from the transferor broker. Further, data specific to a customer, such as price paid by the customer, the acquisition date, or yield, must be transmitted separately as these data will be different for each customer and cannot be derived from the CUSIP number.

A few commenters focused specifically on the list of debt instrument-specific data that was included in proposed § 1.6045A–1(b)(3). One commenter asked if the amount of acquisition premium already amortized should be added to the list, pointing out that accrued market discount and amortized bond premium are already reportable. One commenter asked that the date through which the transferor broker made adjustments be added to the list. These final regulations adopt these comments and add these data to the list of transfer statement items.

One commenter asked whether, when complying with the transfer statement rules under section 6045A for a section 1256 option, a broker may report the adjusted basis instead of the original basis for a position that has been marked to market. Section 1.6045A–1(b)(1)(vii) of the 2010 final regulations requires a broker to report the adjusted basis of a specified security. Therefore, no change is needed to address this comment.

One commenter asked for penalty relief for transfer reporting analogous to the relief that was provided for transfer reporting for stock in Notice 2010–67, 2010–43 I.R.B. 529. Under Notice 2010–67, although broker reporting for basis began for some stock acquired on or after January 1, 2011, transferring brokers were given penalty relief if they did not provide transfer statements for transfers occurring during 2011, and receiving brokers were instructed to treat a transfer during 2011 for which no transfer statement was received as the transfer of a noncovered security. Instead of penalty relief, the Treasury Department and the IRS believe that it is appropriate to provide additional time for brokers to phase in transfer reporting for transfers of debt instruments, options, and securities futures contracts, and the final regulations provide that transfer reporting for debt instruments, options, and securities futures contracts will be applicable no earlier than January 1, 2015.

F. Issuer Reporting Under Section 6045B

A number of comments were received concerning returns relating to issuer actions affecting the basis of securities under section 6045B. Several commenters asked whether certain types of events would be reportable under section 6045B, including the issuance of a debt instrument, a reissuance of a debt instrument, and a reorganization in bankruptcy where new debt instruments are issued for old debt instruments. Section 6045B only applies to an issuer action that affects basis. The issuance of a debt instrument generally is not an issuer action affecting the basis of a debt instrument. Accordingly, in many cases, the issuance of a debt instrument is not subject to section 6045B. The legislative history, however, indicates that reorganizations, such as mergers and acquisitions, are among the organizational actions that can trigger reporting under section 6045B. Thus, for example, the issuance of a debt instrument in a recapitalization, including a recapitalization resulting from a significant modification or a bankruptcy reorganization, can be an issuer action affecting the basis of a debt instrument for purposes of section 6045B.

One commenter pointed out that a REMIC regular interest is excluded from being a covered security, but is not excluded from being a specified security. With respect to reporting under section 6045B, the commenter requested that if a specified security is not subject to basis reporting, issuer reporting under section 6045B should not be required. These final regulations clarify that a REMIC regular interest is not a specified security and, therefore, is not subject to reporting under section 6045B.

Section 1.6045B–1(a)(3) of the 2010 final regulations provides that an issuer may meet its reporting obligation under section 6045B by posting a copy of Form 8937 to its public Web site. One commenter renewed a request that the IRS permit an issuer to provide the information required by section 6045B on a Web site without posting a copy of Form 8937. The regulations do not adopt this suggestion because posting a copy of Form 8937 ensures consistent presentation of the reported information. Another commenter noted that posting a copy of Form 8937 could facilitate identity theft because the written signature of the certifying company official would be widely available. These final regulations allow an issuer to publicly post a Form 8937 with an electronic signature as an alternative to a written signature.

One commenter requested that a clearing organization involved in clearing exchange-traded options be treated as an issuer rather than a writer for purposes of section 6045B. Other commenters suggested language to clarify the identification of the party responsible for reporting in the case of an OTC option. In response to the commenters, these final regulations specify that a clearing organization that is the counterparty to an exchange-traded option is the issuer of the option for purposes of section 6045B, and the writer of an OTC option is the issuer for purposes of section 6045B.

One commenter pointed out that currently there is no safe harbor for modifications to non-debt instruments, so any modification of an option technically might result in a taxable event. The commenter recommended providing an assumption for brokers that changes to option terms do not result in a taxable event if section 1001 does not apply. This request is outside the scope of the current project and so no changes were made to these final regulations in response to this comment. It should be noted, however, that under these final regulations, an option issuer only needs to comply with § 1.6045B–1 if the change in the underlying asset results in a different number of option contracts. If the terms of the option are changed to reflect a corporate event, but the number of option contracts does not change, a section 6045B event has not occurred.

G. Foreign Intermediaries

One commenter requested that foreign entities that are not U.S. payors and are either qualified intermediaries or participating foreign financial institutions be excluded from basis reporting requirements. The Treasury Department and the IRS intend to issue future guidance coordinating the reporting requirements applicable to qualified intermediaries and participating foreign financial institutions under chapter 61 (including section 6045) with the applicable chapter 4 reporting requirements.

H. Temporary Regulations Related to Reporting of Bond Premium and Acquisition Premium

As noted earlier in this preamble, a number of commenters requested that the rules for reporting interest income associated with a debt instrument acquired at a premium be conformed to the rules regarding basis reporting for these same debt instruments. Under the current information reporting rules under section 6049, interest income is reported without adjustment for bond premium or acquisition premium.

Under section 171(e) (which was added to the Code in 1988) and § 1.171–1 (which was amended in 1997 to reflect the addition of section 171(e)), amortized bond premium offsets stated interest payments. As a result, only the portion of a stated interest payment that is not offset by the amortized premium is treated as interest for federal income tax purposes. Under section 6049(a), the Secretary can prescribe regulations to implement the reporting of interest payments, which includes the determination of the amount of a payment that is reportable interest. Similarly, notwithstanding section 6049(d)(6)(A)(i), under section 6049(a), the Secretary can prescribe regulations to implement the reporting of OID, which includes the determination of the amount reportable as OID (interest).

The Treasury Department and the IRS believe that the income reporting and basis reporting rules should be consistent. Therefore, to improve consistency between income reporting and basis reporting and to provide immediate guidance to brokers and investors, this document adds temporary regulations under section 6049 to require broker reporting of interest (OID) income to reflect amounts of amortized bond premium or acquisition premium for a covered debt instrument.

Under the temporary regulations, for purposes of section 6049, a broker will assume that a customer has elected to amortize bond premium unless the broker has been notified that the customer has not made the election. It should be noted that this change applies only to the information reported by the broker to its customer. Thus, a customer that does not prefer to make the section 171 election can report interest on the customer's income tax return unadjusted for bond premium because the information reporting rules do not change the substantive rules affecting bond premium (or any of the other rules pertaining to OID, market discount, or acquisition premium). Moreover, a customer can notify a broker that the customer has not made or has revoked a section 171 election, and the broker is required to reflect this fact on the Form 1099–INT and the Form 1099–B. If a broker is required to report amounts reflecting amortization of bond premium, the temporary regulations allow a broker to report either a gross amount for both stated interest and amortized bond premium or a net amount of stated interest that reflects the offset of the stated interest payment by the amount of amortized bond premium allocable to the payment.

In addition, under the temporary regulations, for purposes of section 6049, a broker must report OID adjusted for acquisition premium in accordance with § 1.1272–2 by assuming that a customer has not elected to amortize acquisition premium based on a constant yield. However, if the broker has been notified that the customer has made an election to amortize acquisition premium based on a constant yield, the broker is required to reflect this fact on the Form 1099–OID and the Form 1099–B. The temporary regulations allow a broker to report either a gross amount for both OID and acquisition premium, or a net amount of OID that reflects the offset of the OID by the amount of amortized acquisition premium allocable to the OID.

I. Form 8281

Under § 1.1275–3(c) of the current final regulations, an issuer of a publicly offered debt instrument issued with OID must file a Form 8281, ''Information Return for Publicly Offered Original Issue Discount Instruments,'' within 30 days after the issue date of the debt instrument. The information from Form 8281 is used to develop the tables of OID information that are part of Publication 1212, ''Guide to Original Issue Discount (OID) Instruments.'' To be publicly offered, a debt instrument generally must be registered with the Securities and Exchange Commission as of the instrument's issue date. In many instances, a debt instrument issued in a private placement is registered with the Securities and Exchange Commission after the issue date. As a result, a Form 8281 is not required to be filed with the IRS and, therefore, the OID information generally does not appear in the Publication 1212 tables. A number of commenters on the proposed regulations asked that OID information on more debt instruments be provided in the tables to Publication 1212. In response to these comments, the regulations under § 1.1275–3(c) are amended to require the filing of a Form 8281 for a debt instrument that is part of an issue the offering of which is registered with the Securities and Exchange Commission after the issue date of the debt instrument. The Form 8281 is required to be filed within 30 days of the date the offering is registered with the Securities and Exchange Commission.

J. Consideration of Administrative Burdens Related to Basis Reporting

A number of commenters indicated that compliance with basis reporting requirements and the use of basis and other information reported by brokers will require considerable resources and effort on the part of return preparers and information recipients. The Treasury Department and the IRS are continuing to review all aspects of the information reporting process and are exploring ways to reduce the compliance burden for both brokers and for information recipients.

Effective/Applicability Dates

These regulations are effective when published in the **Federal Register** as final regulations. In general, the regulations regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) apply to certain debt instruments acquired on or after January 1, 2014. *See* § 1.6045–1(n)(2). In general, for all other debt instruments, the regulations apply to debt instruments acquired on or after January 1, 2016. *See* § 1.6045–1(n)(3). The regulations regarding reporting of gross proceeds, basis, and whether gain or loss on a sale is long-term or short-term under section 6045(h) apply to options granted or acquired on or after January 1, 2014. The regulations regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term apply to securities futures contracts entered into on or after January 1, 2014. In general, the regulations regarding transfer reporting for certain debt instruments, options, and securities futures contracts apply to transfers occurring on or after January 1, 2015. The regulations regarding transfer reporting for more complex debt instruments apply to transfers occurring on or after January 1, 2017. *See* § 1.6045A–1(d). The regulations regarding reporting for issuer actions that affect the basis of certain debt instruments, options, and securities futures contracts apply to issuer actions occurring on or after January 1, 2014. The regulations regarding reporting for issuer actions that affect the basis of more complex debt instruments apply to issuer actions occurring on or after January 1, 2016. *See* § 1.6045B–1(j). The final regulations regarding the filing of Form 8281 apply to a debt instrument that is part of an issue the offering of which is registered with the Securities and Exchange Commission on or after January 1, 2014. The temporary regulations under section 6049 relating to the reporting of premium apply to covered securities acquired on or after January 1, 2014.

Special Analyses

It has been determined that this rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 temporary regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to the temporary regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the final regulations in this document will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by the rules in the final regulations flows directly from section 403 of the Act.

Section 403(a) of the Act modifies section 6045 to require that, when reporting the sale of a covered security, brokers report the adjusted basis of the security and whether any gain or loss with respect to the security is long-term or short-term. The Act also requires gross proceeds reporting for options. It is anticipated that these statutory requirements will fall only on financial services firms with annual receipts greater than $7 million and, therefore, on no small entities. Further, in implementing the statutory requirements, the final regulations generally limit reporting to information required under the Act.

Section 403(a) of the Act requires a broker to report the adjusted basis of a debt instrument that is a covered security. The holder of a debt instrument is permitted to make a number of elections that affect how basis is computed. To minimize the need for reconciliation between information reported by a broker to both a customer and the IRS and the amounts reported on the customer's tax return, the final regulations require a broker to take into account certain specified elections in reporting information to the customer. Therefore, under the final regulations, a customer must provide certain information concerning an election to the broker in a written notification, which includes a writing in electronic format. It is anticipated that this collection of information will not fall on a substantial number of small entities. Further, the final regulations generally implement the statutory requirements for reporting adjusted basis. Moreover, any economic impact is expected to be minimal because it should take a customer no more than seven minutes to satisfy the information-sharing requirement in these final regulations.

Section 403(c) of the Act added section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. The modifications to § 1.6045A–1 effectuate the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to a debt instrument or option is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the final regulations do not add to the impact on small entities imposed by the statutory scheme. Instead, it limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act added section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly offered. The modifications to § 1.6045B–1 limit reporting to the additional information for debt instruments and options necessary to meet the Act's requirements. Additionally, the final regulations, as modified, retain the rule that permits an issuer to report each action publicly instead of filing a return and furnishing each nominee or holder a statement about the action. The final regulations therefore do not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because the final regulations in this document will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding the final regulations in this document were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received. In addition, the proposed regulations accompanying the section 6049 temporary regulations in this document have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.6049–9T also issued under 26 U.S.C. 6049(a). * * *

■ Par. 2. Section 1.1271–0(b) is amended by adding an entry for § 1.1275–3(c)(4) to read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§ 1.1275–3 OID information reporting requirements.

* * * * *

(c) * * *

(4) Subsequent registration.

* * * * *

■ Par. 3. Section 1.1275–3 is amended by adding paragraph (c)(4) to read as follows:

§ 1.1275–3 OID information reporting requirements.

* * * * *

(c) * * *

(4) *Subsequent registration.* Except as provided in paragraph (c)(3) or (d) of this section, the information reporting requirements of paragraph (c)(1) of this section apply to any debt instrument that has original issue discount if the instrument is part of an issue the offering of which is registered with the Securities and Exchange Commission (SEC) after the issue date of the debt instrument. For example, this paragraph (c)(4) applies to a newly issued debt instrument (B bond) exchanged for an otherwise identical non-SEC-registered debt instrument (A bond) if the B bond is part of an issue the offering of which is registered with the SEC and the B bond has an issue date that is the same as the issue date of the A bond for federal tax purposes because the exchange is not a realization event under § 1.1001–3. If a debt instrument is subject to this paragraph (c)(4), the prescribed form (Form 8281 or any successor) must be filed with the Internal Revenue Service within 30 days after the date the offering is registered with the SEC. This paragraph (c)(4) applies to a debt instrument that is part of an issue the offering of which is registered with the SEC on or after January 1, 2014.

* * * * *

■ Par. 4. Section 1.6045–1 is amended by:

■ 1. Revising paragraphs (a)(3)(v) and (a)(3)(vi) and adding paragraphs (a)(3)(vii) and (a)(3)(viii).
■ 2. Revising paragraphs (a)(8) and (a)(9).
■ 3. Revising paragraphs (a)(14) and (a)(15)(i)(A).
■ 4. Redesignating paragraph (a)(15)(i)(C) as paragraph (a)(15)(i)(G) and adding new paragraphs (a)(15)(i)(C) through (a)(15)(i)(F).
■ 5. Adding a new sentence at the end of paragraph (a)(15)(ii).
■ 6. Adding new paragraphs (a)(17) and (a)(18).
■ 7. Adding two new sentences at the end of paragraph (c)(3)(vii)(C) and adding a new sentence at the end of paragraph (c)(3)(vii)(D).
■ 8. Adding a new sentence at the end of paragraph (c)(3)(x) and revising the first two sentences in paragraph (c)(3)(xi)(C).
■ 9. Adding new paragraph (c)(3)(xiii).
■ 10. Revising the last sentence of paragraph (c)(4) *Example 9* (i).
■ 11. Adding two new sentences at the end of paragraph (d)(2)(i) and revising paragraph (d)(2)(ii) and the first sentence of paragraph (d)(2)(iii).
■ 12. Revising paragraph (d)(3).
■ 13. Removing the first four sentences of paragraph (d)(5) and adding six sentences in their place.
■ 14. Revising the second sentence and adding two new sentences at the end of paragraph (d)(6)(i).
■ 15. Removing the first three sentences of paragraph (d)(6)(ii)(A) and adding five sentences in their place.
■ 16. Revising the heading for paragraph (d)(6)(ii)(B).
■ 17. Revising the last sentence of paragraph (d)(6)(iii)(A).
■ 18. Revising paragraph (d)(6)(iv).
■ 19. Revising paragraph (d)(6)(vii) *Example 4.*

■ 20. Revising the second sentence of paragraph (d)(7)(i).

■ 21. Removing the first sentence of paragraph (d)(8)(i)(A) and adding a sentence and a parenthetical phrase in its place.

■ 22. Adding paragraphs (m) and (n).

The additions and revisions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) * * *

(3) * * *

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer;

(vi) An interest in a security described in paragraph (a)(3)(i) or (iv) of this section (but not including executory contracts that require delivery of such type of security);

(vii) An option described in paragraph (m)(2) of this section; or

(viii) A securities futures contract.

* * * * *

(8) The term *closing transaction* means a lapse, expiration, settlement, abandonment, or other termination of a position. For purposes of the preceding sentence, a position includes a right or an obligation under a forward contract, a regulated futures contract, a securities futures contract, or an option.

(9) The term *sale* means any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts, and includes redemptions of stock, retirements of debt instruments (including a partial retirement attributable to a principal payment received on or after January 1, 2014), and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of an option, a regulated futures contract, a securities futures contract, or a forward contract, a sale includes any closing transaction. When a closing transaction for a contract described in section 1256(b)(1)(A) involves making or taking delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. When a closing transaction for a contract described in section 988(c)(5) involves making delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. For purposes of the preceding sentence, a broker may assume that any customer's functional currency is the U.S. dollar. When a closing transaction in a forward contract involves making or taking delivery, the broker may treat the delivery as a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term *sale* does not include entering into a contract that requires delivery of personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in section 988(c)(5)). For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under section 475 or 1296 are not sales.

* * * * *

(14) The term *specified security* means:

(i) Any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation, either foreign or domestic (provided that, solely for purposes of this paragraph (a)(14)(i), a security classified as stock by the issuer is treated as stock, and if the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles);

(ii) Any debt instrument described in paragraph (a)(17) of this section, other than a debt instrument subject to section 1272(a)(6) (certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in section 1272(a)(2)(C);

(iii) Any option described in paragraph (m)(2) of this section; or

(iv) Any securities futures contract.

(15) * * *

(i) * * *

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under § 1.1012–1(e).

* * * * *

(C) A specified security described in paragraphs (a)(14)(ii) and (n)(2)(i) of this section (not including the debt instruments described in paragraph (n)(2)(ii) of this section) acquired for cash in an account on or after January 1, 2014.

(D) A specified security described in paragraphs (a)(14)(ii) and (n)(3) of this section acquired for cash in an account on or after January 1, 2016.

(E) An option described in paragraph (a)(14)(iii) of this section granted or acquired for cash in an account on or after January 1, 2014.

(F) A securities futures contract described in paragraph (a)(14)(iv) of this section entered into in an account on or after January 1, 2014.

* * * * *

(ii) * * * Acquiring a security in an account includes granting an option and entering into a short sale.

* * * * *

(17) For purposes of this section, the terms *debt instrument, bond, debt obligation,* and *obligation* mean a debt instrument as defined in § 1.1275–1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Internal Revenue Code (for example, a regular interest in a REMIC as defined in section 860G(a)(1) and § 1.860G–1). Solely for purposes of this section, a security classified as debt by the issuer is treated as debt. If the issuer has not classified the security, the security is not treated as debt unless the broker knows that the security is reasonably classified as debt under general Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Internal Revenue Code.

(18) For purposes of this section, the term *securities futures contract* means a contract described in section 1234B(c) whose underlying asset is described in paragraph (a)(14)(i) of this section and which is entered into on or after January 1, 2014.

* * * * *

(c) * * *

(3) * * *

(vii) * * *

(C) * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014. For a short-term obligation issued on or after January 1, 2014, see paragraph (c)(3)(xiii) of this section.

(D) * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

* * * * *

(x) *Certain retirements.* * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(xi) * * *

(C) *Short sale obligation transferred to another account.* If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A–1(b)(7)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). * * *

* * * * *

(xiii) *Short-term obligations issued on or after January 1, 2014.* No return of information is required under this section with respect to a sale (including a retirement) of a short-term obligation, as described in section 1272(a)(2)(C), that is issued on or after January 1, 2014.

(4) * * *

Example 9. (i) * * * N indicates on the transfer statement that the transferred stock was borrowed in accordance with § 1.6045A–1(b)(7).

* * * * *

(d) * * *

(2) *Transactional reporting*—(i) *Required information.* * * * In addition, for a sale of a covered security on or after January 1, 2014, a broker must report on Form 1099–B whether any gain or loss is ordinary. See paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments.

(ii) *Specific identification of securities.* Except as provided in § 1.1012–1(e)(7)(ii), for a specified security described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or for a specified security described in paragraph (a)(14)(ii) of this section sold on or after January 1, 2014, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. *See* § 1.1012–1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

(iii) *Sales of noncovered securities.* A broker is not required to report adjusted basis and the character of any gain or loss for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. * * *

* * * * *

(3) *Sales between interest payment dates.* For each sale of a debt instrument prior to maturity with respect to which a broker is required to make a return of information under this section, a broker must show separately on Form 1099 the amount of accrued and unpaid qualified stated interest as of the sale date that must be reported by the customer as interest income under § 1.61–7(d). *See* § 1.1273–1(c) for the definition of qualified stated interest. Such interest information must be shown in the manner and at the time required by Form 1099 and section 6049.

* * * * *

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any qualified stated interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction (other than a closing transaction related to an option) that results in a loss, gross proceeds are the amount debited from the customer's account. For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2014, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2014, or for the treatment of an option granted or acquired on or after January 1, 2014, see paragraph (m) of this section. * * *

(6) *Adjusted basis*—(i) *In general.* * * * A broker is not required to consider transactions or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in § 1.6045B–1) furnished or deemed furnished to the broker. Except as otherwise provided in paragraph (n) of this section, a broker is not required to consider customer elections. For rules related to the adjusted basis of a debt instrument, see paragraph (n) of this section.

(ii) *Initial basis*—(A) *Cost basis.* For a security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2014. For rules related to options granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2014. A broker may not increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired on or after January 1, 2014. * * *

(B) *Basis of transferred securities* * * *

* * * * *

(iii) *Adjustments for wash sales*—(A) *In general.* * * * The broker must increase the basis of the purchased security by the amount of loss disallowed on the sale transaction.

* * * * *

(iv) *Certain adjustments not taken into account.* A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company), or section 1092 (regarding straddles) when reporting adjusted basis.

* * * * *

(vii) * * *

Example 4. R, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2014, C grants R a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2015. On October 2, 2015, R exercises the option and purchases 100 shares. On December 2, 2015, R sells the 100 shares. Under paragraph (d)(6)(ii)(A) of this section, C is required to determine adjusted basis from the amount R pays under the terms of the option. Under paragraph (d)(6)(ii)(A) of this section, C is not permitted to adjust basis for any amount R must include as wage income with respect to the October 2, 2015, stock purchase.

(7) *Long-term or short-term gain or loss*—(i) *In general.* * * * A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in § 1.6045B–1) furnished or deemed furnished to the broker.

* * * * *

(8) *Conversion into United States dollars of amounts paid or received in foreign currency*—(i) *Conversion rules*—(A) When a payment other than a payment of interest is made in a foreign currency, a broker must determine the U.S. dollar amount of the payment by converting the foreign currency into U.S. dollars on the date it receives, credits, or makes the payment, as applicable, at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. (For interest payments, see paragraph (n)(4)(v) of this section concerning a customer's spot rate election.) * * *

* * * * *

(m) *Additional rules for option transactions*—(1) *In general.* This paragraph (m) provides rules for a broker to determine and report the information required under this section for an option that is a covered security under paragraph (a)(15)(i)(E) of this section.

(2) *Scope*—(i) *In general.* Paragraph (m) of this section applies to the following types of options granted or acquired on or after January 1, 2014:

(A) An option on one or more specified securities (which includes an index substantially all the components of which are specified securities);

(B) An option on financial attributes of specified securities, such as interest rates or dividend yields; or

(C) A warrant or a stock right.

(ii) *Delayed effective date for certain options.* Notwithstanding paragraph (m)(2)(i) of this section, if an option, stock right, or warrant is issued as part of an investment unit described in § 1.1273–2(h), paragraph (m) of this section applies to the option, stock right, or warrant if it is acquired on or after January 1, 2016.

(iii) *Compensatory option.* Notwithstanding paragraphs (m)(2)(i) and (m)(2)(ii) of this section, paragraph (m) of this section does not apply to compensatory options.

(3) *Option subject to section 1256.* If an option described in paragraph (m)(2) of this section is also described in section 1256(b), a broker must apply the rules described in paragraph (c)(5) of this section by treating the option as if it were a regulated futures contract and must report the information required under paragraph (c)(5) of this section. A broker is permitted, but not required, to report the amounts for options and the amounts for regulated futures contracts determined under paragraph (c)(5) of this section as a net amount for each reportable item.

(4) *Option not subject to section 1256.* The following rules apply to an option that is described in paragraph (m)(2) of this section but is not also described in paragraph (m)(3) of this section:

(i) *Physical settlement.* For purposes of paragraph (d) of this section, if a specified security (other than an option) is acquired or disposed of pursuant to the exercise of an option, the broker must adjust the basis of the acquired asset or the gross proceeds amount as appropriate to account for any payment related to the option, including the premium.

(ii) *Cash settlement.* For purposes of paragraph (d) of this section, for an option that is settled for cash, a broker must reflect on Form 1099–B all payments made or received on the option. For a purchased option, a broker must report as basis the premium paid plus any costs (for example, commissions) related to the acquisition of the option and must report as proceeds the gross proceeds from settlement minus any costs related to the settlement of the option. For a written option, a broker must report as proceeds the premium received decreased by any amounts paid on the option and report $0 as the basis of the option.

(iii) *Rules for warrants and stock rights acquired in a section 305 distribution.* For a right (including a warrant) to acquire stock received in the same account as the underlying security in a distribution that is described in section 305(a), a broker is permitted, but not required, to apply the rules described in sections 305 and 307 when reporting or accounting for the basis of the option and the underlying equity. If a stock right or warrant is acquired from the initial distributee, the buyer or transferee must treat it as an option covered by either paragraph (m)(4)(i) or (m)(4)(ii) of this section.

(iv) *Examples.* The following examples illustrate the rules in this paragraph (m)(4):

Example 1. (i) On January 15, 2014, C, an individual who is neither a dealer nor a trader in securities, writes a 2-year exchange-traded option on 100 shares of Company X through Broker D. C receives a premium for the option of $100 and pays no commission. In C's hands, the option produces capital gain or loss and Company X stock is a capital asset. On December 16, 2014, C pays $110 to close out the option.

(ii) D is required to report information about the closing transaction because the option is a covered security as described in paragraph (a)(15)(i)(E) of this section and was part of a closing transaction described in paragraph (a)(8) of this section. Under paragraph (m)(4)(ii) of this section, D must report as gross proceeds on C's Form 1099–B -$10 (the $100 received as option premium minus the $110 C paid to close out the option) and report $0 in the basis box on the Form 1099–B. Under section 1234(b)(1) and paragraph (d)(2) of this section, D must also report the loss on the closing transaction as a short-term capital loss.

Example 2. (i) On January 15, 2014, E, an individual who is neither a dealer nor a trader in securities, buys a 2-year exchange-traded option on 100 shares of Company X through Broker F. E pays a premium of $100 for the option and pays no commission. In E's hands, both the option and Company X stock are capital assets. On December 16, 2014, E receives $110 to close out the option.

(ii) F is required to report information about the closing transaction because the option is a covered security as described in paragraph (a)(15)(i)(E) of this section and was part of a closing transaction described in paragraph (a)(8) of this section. Because the option is on the shares of a single company, it is an equity option described in section 1256(g)(6) and is not described in section 1256(b)(1)(C). Therefore, the rules of paragraph (m)(3) of this section do not apply, and F must report under paragraph (m)(4) of this section. Under paragraph (m)(4)(ii) of this section, F must report $110 as gross proceeds on the Form 1099–B for the gross proceeds E received and $100 in the basis box on the Form 1099–B to reflect the $100 option premium paid. Under section 1234(b)(1) and paragraph (d)(2) of this section, F must also report the gain on the closing transaction as a short-term capital gain.

(5) *Multiple options documented in a single contract.* If more than one option described in paragraph (m)(2) of this section is documented in a single contract, a broker must separately report the required information for each option as that option is sold.

(6) *Determination of index status.* Penalties will not be asserted under sections 6721 and 6722 if a broker in good faith determines that an index is, or is not, a narrow-based index described in section 1256(g)(6) and

reports in a manner consistent with this determination.

(n) *Reporting for debt instrument transactions*—(1) *In general.* For purposes of this section, this paragraph (n) provides rules for a broker to determine and report information for a debt instrument that is a covered security under paragraph (a)(15)(i)(C) or (D) of this section. Neither a debt instrument subject to section 1272(a)(6) nor a short-term obligation described in section 1272(a)(2)(C) is subject to this paragraph (n) because neither is a specified security under paragraph (a)(14)(ii) of this section (a requirement for a debt instrument to be a covered security).

(2) *Debt instruments subject to January 1, 2014, reporting*—(i) *In general.* For purposes of paragraph (a)(15)(i)(C) of this section, except as provided in paragraph (n)(2)(ii) of this section, a debt instrument is described in this paragraph (n)(2)(i) if the debt instrument is one of the following:

(A) A debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined for the instrument under § 1.1272–1(b);

(B) A debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined for the instrument under § 1.1272–1(c); or

(C) A debt instrument for which the yield of the debt instrument can be determined under § 1.1272–1(d).

(ii) *Exceptions.* A debt instrument is not described in paragraph (n)(2)(i) of this section if the debt instrument is one of the following:

(A) A debt instrument that provides for more than one rate of stated interest (including a debt instrument that provides for stepped interest rates);

(B) A convertible debt instrument described in § 1.1272–1(e);

(C) A stripped bond or stripped coupon subject to section 1286;

(D) A debt instrument that requires payment of either interest or principal in a currency other than the U.S. dollar;

(E) A debt instrument that, at one or more times in the future, entitles a holder to a tax credit;

(F) A debt instrument that provides for a payment-in-kind (PIK) feature (that is, under the terms of the debt instrument, a holder may receive one or more additional debt instruments of the issuer);

(G) A debt instrument issued by a non-U.S. issuer;

(H) A debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer;

(I) A debt instrument that is issued as part of an investment unit described in § 1.1273–2(h); or

(J) A debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization described in § 1.1471–1(b)(18).

(iii) *Remote or incidental.* For purposes of paragraphs (n)(2)(i) and (n)(2)(ii) of this section, a remote or incidental contingency (as determined under § 1.1275–2(h)) is ignored.

(iv) *Penalty rate.* For purposes of paragraph (n)(2)(ii)(A) of this section, a debt instrument does not provide for more than one rate of stated interest merely because the instrument provides for a penalty interest rate or an adjustment to the stated interest rate in the event of a default or similar event.

(3) *Debt instruments subject to January 1, 2016, reporting.* For purposes of paragraph (a)(15)(i)(D) of this section, a debt instrument is described in this paragraph (n)(3) if it is described in paragraph (n)(2)(ii) of this section or it otherwise is not described in paragraph (n)(2)(i) of this section. For example, this paragraph (n)(3) applies to variable rate debt instruments, inflation-indexed debt instruments, and contingent payment debt instruments because these instruments are not described in paragraph (n)(2)(i) of this section.

(4) *Holder elections.* For purposes of this section, a broker is required to take into account an election described in this paragraph (n)(4), and the broker must take the election into account in accordance with the rules in paragraph (n)(5) of this section. A broker, however, may not take into account any other election.

(i) *Election to amortize bond premium.* An election under section 171 and § 1.171–4 to amortize bond premium on a taxable debt instrument (this election applies to all taxable debt instruments held by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(ii) *Election to currently include accrued market discount.* An election under section 1278(b) to include market discount in income as it accrues (this election applies to all debt instruments acquired by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(iii) *Election to accrue market discount based on a constant yield.* An election under section 1276(b)(2) to compute accruals of market discount using a constant yield method (this election is generally made on an instrument-by-instrument basis and must be made for the earliest taxable year for which the taxpayer is required to determine accrued market discount on the debt instrument; this election may not be revoked).

(iv) *Election to treat all interest as OID.* An election under § 1.1272–3 to treat all interest on a taxable debt instrument (adjusted for any acquisition premium or premium) as original issue discount (this election is generally made on an instrument-by-instrument basis and must be made for the taxable year the debt instrument is acquired by the taxpayer; this election may be revoked with the consent of the Commissioner).

(v) *Election to translate interest income and expense at the spot rate.* An election under § 1.988–2(b)(2)(iii)(B) to translate interest income and expense at the spot rate on the last day of the interest accrual period or, in the case of a partial accrual period, the last day of the taxable year (this election applies to all taxable debt instruments held by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(5) *Broker assumptions and customer notice to brokers*—(i) *Broker assumptions if the customer does not notify the broker.* Except as provided in paragraph (n)(5)(ii)(A) of this section, a broker must report the information required under paragraph (d) of this section by assuming that a customer has made the election to amortize bond premium described in paragraph (n)(4)(i) of this section. In addition, except as provided in paragraph (n)(5)(ii)(B) of this section, a broker must report the information required under paragraph (d) of this section by assuming that a customer has not made an election described in paragraph (n)(4)(ii), (n)(4)(iii), (n)(4)(iv), or (n)(4)(v) of this section.

(ii) *Effect of customer notification of an election or revocation*—(A) *Election to amortize bond premium.* If a customer notifies a broker in writing that the customer does not want the broker to take into account the election to amortize bond premium, the broker must report the information required under paragraph (d) of this section without taking into account the election to amortize bond premium. The customer must provide this notification to the broker by the end of the calendar year for which the customer does not want to amortize bond premium. If for a subsequent calendar year, the customer wants the broker to take into account the election to amortize bond premium, the customer must notify the broker in writing by the end of the calendar year that the customer wants to amortize bond premium. If the customer provides such notification, the broker must report the information required under paragraph (d) of this section as if the customer made the election to amortize bond premium for that year.

(B) *Other debt elections.* If a customer notifies a broker in writing that the customer has made or will make an election described in paragraph (n)(4)(ii), (iii), (iv), or (v) of this section, the broker must report the information required under paragraph (d) of this section by taking into account the election. A customer must notify the broker in writing of the election by the end of the calendar year in which a debt instrument subject to the election is acquired in, or transferred into, an account with the broker or, if later, by the end of the calendar year for which the election is effective. If a customer has revoked or will revoke an election described in paragraph (n)(4)(ii), (n)(4)(iv), or (n)(4)(v) of this section for a calendar year, the customer must notify the broker of the revocation in writing by the end of the calendar year for which the revocation is effective. If the customer provides such notification, the broker must report the information required under paragraph (d) of this section by taking into account the revocation.

(iii) *Electronic notification.* For purposes of paragraph (n)(5)(ii) of this section, the written notification to the broker includes a writing in electronic format.

(6) *Reporting of accrued market discount.* In addition to the information required to be reported under paragraph (d) of this section, if a debt instrument is subject to the market discount rules in sections 1276 through 1278, a broker also must report the information described in paragraph (n)(6)(i) or (n)(6)(ii) of this section, whichever is applicable. Such information must be shown in the manner and at the time required by Form 1099 and section 6045.

(i) *Sale.* A broker must report the amount of market discount that has accrued on a debt instrument as of the date of the instrument's sale, as defined in paragraph (a)(9) of this section. See paragraph (n)(5) of this section to determine whether the amount reported should take into account a customer election under section 1276(b)(2). See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount. This paragraph (n)(6)(i) does not apply if the customer notifies the broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues.

(ii) *Current inclusion election.* If a customer notifies a broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues, the broker is required to report to the customer the amount of market discount that accrued on a debt instrument during a taxable year while held by the customer in the account. The broker also must adjust basis in accordance with section 1278(b)(4). If a customer notifies a broker under the rules in paragraph (n)(5) of this section that the customer is revoking its election under section 1278(b), the broker will not report the market discount accrued during the taxable year of the revocation and thereafter and will cease to adjust basis in accordance with section 1278(b)(4). See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount.

(7) *Adjusted basis.* For purposes of this section, a broker must use the rules in paragraph (n) of this section to determine the adjusted basis of a debt instrument.

(i) *Original issue discount.* If a debt instrument is subject to the original issue discount rules in sections 1271 through 1275, section 1286, or section 1288, a broker must increase a customer's basis in the debt instrument by the amount of original issue discount that accrued on the debt instrument while held by the customer in the account. See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of original issue discount.

(ii) *Amortizable bond premium*—(A) *Taxable bond.* A broker is required to adjust the customer's basis for any taxable bond acquired at a premium and held in the account in accordance with § 1.1016–5(b). If a customer, however, informs a broker under the rules in paragraph (n)(5)(ii)(A) of this section that the customer does not want to amortize bond premium, the broker must not adjust the customer's basis for any premium.

(B) *Tax-exempt bonds.* A broker is required to adjust the customer's basis for any tax-exempt obligation acquired at a premium and held in the account in accordance with § 1.1016–5(b).

(iii) *Acquisition premium.* If a debt instrument is acquired at an acquisition premium (as determined under § 1.1272–2(b)(3)), a broker must decrease the customer's basis in the debt instrument by the amount of acquisition premium that is taken into account each year to reduce the amount of the original issue discount that is otherwise includible in the customer's income for that year. *See* § 1.1272–2(b)(4) to determine the amount of the acquisition premium taken into account each year. However, if a customer informs a broker under the rules in paragraph (n)(5) of this section that the customer elects under § 1.1272–3 to use a constant yield to amortize the acquisition premium, then the broker must decrease the customer's basis in the debt instrument by the amount of acquisition premium that is taken into account each year to reduce the amount of the original issue discount that is otherwise includible in the customer's income for that year in accordance with § 1.1272–2(b)(5) and § 1.1272–3.

(iv) *Market discount.* See paragraph (n)(6) of this section for rules to determine the adjusted basis of a debt instrument with market discount.

(v) *Principal and certain other payments.* A broker must decrease the customer's basis in a debt instrument by the amount of any payment made to the customer during the period the debt instrument is held in the account, other than a payment of qualified stated interest as defined in § 1.1273–1(c).

(8) *Accrual period.* For purposes of this section, a broker generally must use the same accrual period that is used to report any original issue discount or stated interest to a customer under section 6049 for a debt instrument. In any other situation, a broker must use a semi-annual accrual period or, if a debt instrument provides for scheduled payments of principal or interest at regular intervals of less than six months over the entire term of the debt instrument, a broker must use an accrual period equal in length to this shorter interval. For example, if a debt instrument provides for monthly payments of interest over the entire term of the debt instrument, the broker must use a monthly accrual period. The rules in § 1.1272–1(b)(4)(iii) apply for purposes of an initial short accrual period. In computing the length of an accrual period, any reasonable counting convention may be used (for example, 30 days per month/360 days per year, or actual days per month/365 days per year).

(9) *Premium on convertible bond.* If a customer acquires a convertible bond (as defined in § 1.171–1(e)(1)(iii)(C)) at a premium (as determined under § 1.171–1(d)), then, solely for purposes of this section and § 1.6049–9T, a broker must

assume that the premium is attributable to the conversion feature. Based on this assumption, no portion of the premium is amortizable for purposes of this section and § 1.6049–9T.

(10) *Effect of broker assumptions on customer.* The rules in this paragraph (n) only apply for purposes of a broker's reporting obligation under section 6045. A customer is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045. In addition, a notification to the broker under paragraph (n)(5) of this section does not constitute an effective election or revocation under the applicable rules for the election.

* * * * *

■ **Par. 5.** Section 1.6045A–1 is amended by:

■ 1. Adding new paragraph (a)(1)(vi) and revising paragraph (b)(1) introductory text and paragraph (b)(1)(v).

■ 2. Revising the second sentence of paragraph (b)(1)(vii).

■ 3. Redesignating paragraphs (b)(2) through (b)(9) as paragraphs (b)(5) through (b)(12) respectively.

■ 4. Redesignating paragraph (b)(1)(viii) as paragraph (b)(2).

■ 5. Revising the introductory text to newly redesignated paragraph (b)(2).

■ 6. Adding new paragraphs (b)(3) and (b)(4).

■ 7. Revising newly redesignated paragraph (b)(5).

■ 8. Revising the first and last sentences of newly redesignated paragraph (b)(6).

■ 9. Revising newly redesignated paragraph (b)(8)(ii).

■ 10. Revising the first sentence of newly redesignated paragraph (b)(9)(ii).

■ 11. Revising the introductory text to newly redesignated paragraph (b)(9)(iii), the fifth sentence of paragraph (b)(9)(iii) *Example 1,* and the second sentence of paragraph (b)(9)(iii) *Example 2.*

■ 12. Revising the last sentence of newly redesignated paragraph (b)(10).

■ 13. Redesignating the text of newly redesignated paragraph (b)(12) as paragraph (b)(12)(i), adding a heading for newly redesignated paragraph (b)(12)(i), and adding new paragraph (b)(12)(ii).

■ 14. Revising paragraph (d).

The additions and revisions read as follows:

§ 1.6045A–1 Statements of information required in connection with transfers of securities.

(a) * * *

(1) * * *

(vi) *Section 1256 options.* A transferor of an option described in § 1.6045–1(m)(3) is not required to furnish a transfer statement.

(b) *Information required*—(1) *In general.* For all specified securities, each transfer statement must include the information described in this paragraph (b)(1).

* * * * *

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), quantity of shares, units, or amounts, and classification of the security (such as stock or debt).

* * * * *

(vii) *Adjusted basis and acquisition date.* * * * The transferor must determine this information as provided under §§ 1.6045–1(d), 1.6045–1(m), and 1.6045–1(n), including reporting the adjusted basis of the security in U.S. dollars.* * *

(2) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section:

* * * * *

(3) *Additional information required for a transfer of a debt instrument.* In addition to the information required in paragraph (b)(1) of this section, for a transfer of a debt instrument that is a covered security, the following additional information is required:

(i) A description of the payment terms used by the broker to compute any basis adjustments under § 1.6045–1(n);

(ii) The issue price of the debt instrument;

(iii) The issue date of the debt instrument (if different from the original acquisition date of the debt instrument);

(iv) The adjusted issue price of the debt instrument as of the transfer date;

(v) The customer's initial basis in the debt instrument;

(vi) Any market discount that has accrued as of the transfer date (as determined under § 1.6045–1(n));

(vii) Any bond premium that has been amortized as of the transfer date (as determined under § 1.6045–1(n));

(viii) Any acquisition premium that has been amortized as of the transfer date (as determined under § 1.6045–1(n)); and

(ix) Whether the transferring broker has computed any of the information described in this paragraph (b)(3) by taking into account one or more elections described in § 1.6045–1(n), and, if so, which election or elections were taken into account by the transferring broker.

(4) *Additional information required for option transfers.* In addition to the information required in paragraph (b)(1) of this section, for a transfer of an option that is a covered security, the following additional information is required:

(i) The date of grant or acquisition of the option;

(ii) The amount of premium paid or received; and

(iii) Any other information required to fully describe the option, which may include a security identifier used by option exchanges, or details about the underlying asset, quantity covered, exercise type, strike price, and maturity date.

(5) *Format of identification.* An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraphs (b)(1), (b)(3), and (b)(4) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker's name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraphs (b)(1), (b)(3), and (b)(4) of this section. As another example, a transferor and a receiving broker may agree to use a security identifier for an exchange-traded option if that information would be sufficient to inform the receiving broker of the terms for that option.

(6) *Transfers of noncovered securities.* The information described in paragraphs (b)(1)(vii), (b)(3), (b)(4), (b)(8), and (b)(9) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. * * * For purposes of this paragraph (b)(6), a transferor must treat a security for which a broker makes a single-account election described in § 1.1012–1(e)(11)(i) as a covered security.

* * * * *

(8) * * *

(ii) *Transfers of securities to satisfy a cash legacy.* If a security is transferred from a decedent or a decedent's estate to satisfy a cash legacy, paragraphs (b)(1), (b)(3), and (b)(4) of this section apply and paragraph (b)(8)(i) of this section does not apply.

* * * * *

(9) * * *

(ii) *Subsequent transfers of gifts by the same customer.* If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(9)(i) of this section for the date of the gift to the customer. * * *

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(9):

Example 1. * * * Under paragraph (b)(9)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. * * *

Example 2. * * * Under paragraph (b)(9)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. * * *

(10) * * * If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any securities in the account for which the transferor does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

* * * * *

(12) *Failure to receive a complete transfer statement*—(i) *In general.* * * *

(ii) *Transition rules for transfers of debt instruments, options, and securities futures contracts.* If an option described in § 1.6045–1(a)(14)(iii), a securities futures contract described in § 1.6045–1(a)(14)(iv), or a debt instrument described in § 1.6045–1(a)(15)(i)(C) is transferred in 2014 and no transfer statement is received, the receiving broker is not required to request a transfer statement from the transferor and may treat the security as a noncovered security. If a debt instrument described in § 1.6045–1(a)(15)(i)(D) is transferred in 2016 and no transfer statement is received, the receiving broker is not required to request a transfer statement from the transferor and may treat the security as a noncovered security.

* * * * *

(d) *Effective/applicability dates.* This section applies to:

(1) A transfer on or after January 1, 2011, of stock other than stock in a regulated investment company within the meaning of § 1.1012–1(e)(5);

(2) A transfer on or after January 1, 2012, of stock in a regulated investment company;

(3) A transfer on or after January 1, 2015, of an option described in § 1.6045–1(a)(14)(iii), a securities futures contract described in § 1.6045–1(a)(14)(iv), or a debt instrument described in § 1.6045–1(a)(15)(i)(C); and

(4) A transfer on or after January 1, 2017, of a debt instrument described in § 1.6045–1(a)(15)(i)(D).

■ **Par. 6.** Section 1.6045B–1 is amended by:

■ 1. Adding two new sentences at the end of paragraph (a)(3).

■ 2. Redesignating paragraph (h) as paragraph (j), adding new paragraph (h), adding and reserving paragraph (i), and revising newly-designated paragraph (j).

The additions and revisions read as follows:

§ 1.6045B–1 Returns relating to actions affecting basis of securities.

(a) * * *

(3) *Exception for public reporting.* * * * An issuer may electronically sign a return that is publicly reported in accordance with this paragraph (a)(3). The electronic signature must identify the individual who attests to the declaration in the jurat.

* * * * *

(h) *Rule for options*—(1) *In general.* For an option granted or acquired on or after January 1, 2014, if the original contract is replaced by a different number of option contracts, the following rules apply:

(i) If the option is an exchange-traded option, any clearinghouse or clearing facility that serves as a counterparty is treated as the issuer of the option for purposes of section 6045B.

(ii) If the option is not an exchange-traded option, the option writer is treated as the issuer of the option for purposes of section 6045B.

(2) *Examples.* The following examples illustrate the rules of paragraph (h)(1) of this section:

Example 1. On January 15, 2014, F, an individual, purchases a one-year exchange-traded call option on 100 shares of Company X stock, with a strike price of $110. The call option is cleared through Clearinghouse G. Company X executes a 2-for-1 stock split as of April 1, 2014. Due to the stock split, the terms of F's option are altered, resulting in two option contracts, each on 100 shares of Company X stock with a strike price of $55. All other terms remain the same. Under paragraph (h)(1)(i) of this section, Clearinghouse G is required to prepare an issuer report for F.

Example 2. On January 31, 2014, J, an individual, purchases from K a non-exchange traded 7-month call option on 100 shares of Company X stock, with a strike price of $110. Company X executes a 2-for-1 stock split as of April 1, 2014. Due to the stock split, the terms of J's option are altered, resulting in one option contract on 200 shares of Company X stock with a strike price of $55. All other terms of the option remain the same. Under paragraph (h)(1) of this section, because the number of option contracts did not change, K is not required to prepare an issuer report for J.

(i) [Reserved]

(j) *Effective/applicability dates.* This section applies to—

(1) Organizational actions occurring on or after January 1, 2011, that affect the basis of specified securities within the meaning of § 1.6045–1(a)(14)(i) other than stock in a regulated investment company within the meaning of § 1.1012–1(e)(5);

(2) Organizational actions occurring on or after January 1, 2012, that affect the basis of stock in a regulated investment company;

(3) Organizational actions occurring on or after January 1, 2014, that affect the basis of debt instruments described in § 1.6045–1(n)(2)(i) (not including the debt instruments described in § 1.6045–1(n)(2)(ii));

(4) Organizational actions occurring on or after January 1, 2016, that affect the basis of debt instruments described in § 1.6045–1(n)(3);

(5) Organizational actions occurring on or after January 1, 2014, that affect the basis of options described in § 1.6045–1(a)(14)(iii); and

(6) Organizational actions occurring on or after January 1, 2014, that affect the basis of securities futures contracts described in § 1.6045–1(a)(14)(iv).

■ **Par. 7.** Section 1.6049–9T is added to read as follows:

§ 1.6049–9T Premium subject to reporting for a debt instrument acquired on or after January 1, 2014 (temporary).

(a) *General rule.* Notwithstanding § 1.6049–5(f), for a debt instrument acquired on or after January 1, 2014, if a broker (as defined in § 1.6045–1(a)(1)) is required to file a statement for a debt instrument under § 1.6049–6, the broker generally must report any bond premium (as defined in § 1.171–1(d)) or acquisition premium (as defined in § 1.1272–2(b)(3)) for the calendar year. This section, however, only applies to a debt instrument that is a covered security as defined in § 1.6045–1(a)(15).

(b) *Reporting of bond premium amortization.* Unless a broker has been notified in writing in accordance with § 1.6045–1(n)(5) that a customer does not want to amortize bond premium under section 171, the broker must report the amount of any amortizable bond premium allocable to a stated interest payment made to the customer during the calendar year. See §§ 1.171–2 and 1.171–3 to determine the amount of amortizable bond premium allocable to a stated interest payment. Instead of reporting a gross amount for both stated interest and amortizable bond premium, a broker may report a net amount of stated interest that reflects the offset of the stated interest payment by the amount of amortizable bond premium allocable to the payment. In this case, the broker must not report the amortizable bond premium as a separate item. This paragraph (b) also applies to amortizable bond premium on a tax-exempt obligation, which is required to be amortized under section 171.

(c) *Reporting of acquisition premium amortization.* A broker must report the amount of any acquisition premium that reduces the amount of original issue discount includible in income by the customer during a calendar year. Unless a broker has been notified in writing in accordance with § 1.6045–1(n)(5) that a customer has made an election under § 1.1272–3 to use a constant yield to amortize the acquisition premium, the broker must use the rules in § 1.1272–2(b)(4) to determine the amount of acquisition premium. Instead of reporting a gross amount for both original issue discount and acquisition premium, a broker may report a net amount of original issue discount that reflects the offset of the original issue discount includible in income by the customer for the calendar year by the amount of acquisition premium allocable to the original issue discount. In this case, the broker must not report the acquisition premium as a separate item. This paragraph (c) does not apply to a tax-exempt obligation.

(d) *Expiration date.* The applicability of this section expires on or before April 15, 2016.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.6045–1(n)(5)	1545–2186
* * * *	*

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: April 11, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–09085 Filed 4–17–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

Training and Retraining of Miners

CFR Correction

In Title 30 of the Code of Federal Regulations, Parts 1 to 199, revised as of July 1, 2012, on page 246, in § 48.6, paragraph (b)(10) is corrected to read as follows:

§ 48.6 Experienced miner training.

* * * * *

(b) * * *

(10) *Health.* The course must include instruction on the purpose of taking dust, noise, and other health measurements, where applicable; must review the health provisions of the Act; and must explain warning labels and any health control plan in effect at the mine.

* * * * *

[FR Doc. 2013–09269 Filed 4–17–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

Training and Retraining of Miners

CFR Correction

In Title 30 of the Code of Federal Regulations, Parts 1 to 199, revised as of July 1, 2012, on page 241, in § 48.3, paragraph (a) introductory text is corrected to read as follows:

§ 48.3 Training plans; time of submission; where filed; information required; time for approval; method of disapproval; commencement of training; approval of instructors.

(a) Except as provided in paragraphs (o) and (p) of this section, each operator of an underground mine shall have an MSHA approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

* * * * *

[FR Doc. 2013–09264 Filed 4–17–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0223]

Drawbridge Operation Regulations; Townsend Gut, Boothbay Harbor and Southport, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard is issuing a temporary deviation from the regulation governing the operation of the Southport SR27 Bridge across Townsend Gut, mile 0.7, between Boothbay Harbor and Southport, Maine. The bridge owner, Maine Department of Transportation, will be performing structural repairs at the bridge. This deviation allows the bridge to operate on a temporary schedule for eight weeks to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from April 27, 2013 through June 28, 2013.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2013–0223 and are available online at *www.regulations.gov*, inserting USCG–2013–0223 in the ‘‘Keyword’’ 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 deviation, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Southport SR27 Bridge, across Townsend Gut, mile 0.7, between Boothbay Harbor and Southport, Maine, has a vertical clearance in the closed position of 10 feet above mean high water and 19 feet above mean low water. The bridge operating regulations are listed at 33 CFR 117.537.

The waterway is transited by recreational and commercial fishing boats. There is an alternate route for navigation around Southport.

The bridge owner, Maine Department of Transportation, requested a temporary deviation from the normal operating schedule to facilitate deck repairs at the bridge.

Under this temporary deviation, the Southport SR27 Bridge shall operate as follows: From April 27, 2013, through May 27, 2013, between 6 a.m. and 6 p.m., Monday through Friday, except holidays, the draw shall open on signal, every two hours, at 6 a.m., 8 a.m., 10 a.m., 12 p.m., 2 p.m., 4 p.m., and 6 p.m.

From May 28, 2013, through June 28, 2013, between 6 p.m. and 6 a.m., Monday through Friday, except holidays, the draw shall open on signal at 6 p.m., 8 p.m., 10 p.m., 2 a.m., and 6 a.m.

In accordance with 33 CFR 117.35(e), the bridge 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: April 4, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–09054 Filed 4–17–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0095]

RIN 1625–AA00

Safety Zone; Blue Water Resort & Casino West Coast Nationals; Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Lake Moovalya region of the navigable waters of the Colorado River in Parker, Arizona for the Blue Water Resort & Casino West Coast Nationals. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, and participating vessels. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 6 a.m. on April 20, 2013, until 6 p.m. on April 21, 2013. It will be enforced from 6 a.m. to 6 p.m. daily on April 20 and 21, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0095. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; Coast Guard; telephone 619–278–7656, email *d11marineventssd@uscg.mil*. If you have questions on viewing the docket, call Barbara Hairston, 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 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 delay would be impracticable. The Coast Guard did not receive necessary information from the event sponsor in time to publish a notice of proposed rulemaking. The event is scheduled to take place, and as such, immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be impracticable and contrary to the public interest, since immediate action is needed to ensure public safety.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act, which authorizes the Coast Guard to establish safety zones (33 U.S.C. sections 1221 *et seq.*).

RPM Racing Enterprises is sponsoring the Blue Water Resort & Casino West Coast Nationals, which is held in Parker, Arizona. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other vessels and users of the waterway. This event involves powerboats racing along a closed course. The size of the boats varies from eight to sixteen feet in length. Approximately 100 boats will be participating in this event. The sponsor will provide two patrol and two rescue boats to help facilitate the event and ensure public safety.

C. Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 6 a.m. to 6 p.m. on April 20, 2013, and April 21, 2013. This safety zone is necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring with this safety zone unless authorized by the Captain of the Port, or his designated representative. This temporary safety zone includes the waters of the Colorado River between Headgate Dam and 0.5 miles north of the Blue Water Marina in Parker, Arizona. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM).

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, timeframe, and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may transit through the established safety zone during the specified times if they obtain authorization from the Captain of the Port or his designated representative.

2. Impact on Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of the Colorado River from 6 a.m. to 6 p.m. on April 20, 2013, and April 21, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will only be enforced for two twelve-hour periods. Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Coast Guard Captain of the Port or his designated representative. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM).

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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. 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 affect 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 which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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 amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–547 to read as follows:

§ 165.T11–547 Safety zone; Blue Water Resort & Casino West Coast Nationals, Parker, AZ.

(a) *Location.* This temporary safety zone includes the waters of the Colorado River between Headgate Dam and 0.5 miles north of the Blue Water Marina in Parker, Arizona.

(b) *Enforcement Period.* This section will be in enforced from 6 a.m. to 6 p.m. on April 20, and 21, 2013. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, a flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 20, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–09057 Filed 4–17–13; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Implementation of Full-Service Intelligent Mail Requirements for Automation Prices

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), throughout various sections to modify eligibility requirements for mailers to qualify for automation prices. Effective January 26, 2014, use of ''full-service'' Intelligent Mail® is required to qualify for automation prices for postcards (First-Class Mail® only), letters, and flats when mailed using the following services: First-Class Mail, Standard Mail® and Periodicals®; and for flats mailed at Bound Printed Matter® prices. Additionally, the 10/24 transitional barcoded tray label format is eliminated, and mailers are required to use the 24-digit Intelligent Mail barcode (IMb ™) format on tray, tub, and sack labels.

DATES: *Effective Date:* January 26, 2014.

FOR FURTHER INFORMATION CONTACT:

Ana Cikowski	email: *ana.cikowski@usps.gov*	phone: 202–268–8079.
Himesh Patel	email: *himesh.a.patel@usps.gov*	phone: 703–280–7498.
Garrett Hoyt	email: *garrett.m.hoyt@usps.gov*	phone: 202–268–5714.

SUPPLEMENTARY INFORMATION: On October 17, 2012, the Postal Service published a Notice of Proposed Rulemaking in the **Federal Register** (77 FR 63771–63781) to require use of full-service Intelligent Mail to qualify for automation prices when mailing First-Class Mail (FCM), Standard Mail, Periodicals, and Bound Printed Matter (BPM) postcards, letters, or flats, as applicable.

For questions regarding full-service requirements, contact the Postal Service by email at *fullservice@usps.gov* or call the *PostalOne!* Help Desk at 800–522–9085.

Background

In January 2009, the Postal Service offered the mailing industry two Intelligent Mail options for automation discounts, which consisted of basic-service and full-service. Currently, a large number of mailers are using these two options and reaping numerous benefits and value.

Since the introduction of full-service Intelligent Mail, the Postal Service has worked closely with mailers, software vendors, and mail service providers to simplify, refine, and evolve full-service offerings. While thousands of users demonstrated the ability to meet the requirements for full-service Intelligent Mail, the Postal Service recognizes that this initiative requires significant changes for those mailers who currently benefit from automation discounts but are not presenting full-service mailings. Therefore, the Postal Service is continually working with the mailing industry to simplify the transition to full-service Intelligent Mail.

Full-Service Mailings

Full-service Intelligent Mail combines the use of unique barcodes with the provision of electronic information regarding the makeup and preparation of mail, which provides high-value services and enables efficient mail processing.

Mailings must bear Intelligent Mail barcodes on mailpieces, trays, and containers, where applicable. Also, mailers must submit mailing documentation electronically.

When preparing full-service mailings, mailers are required to:

• Apply unique Intelligent Mail barcodes (IMb) to identify each postcard, letter, and flat mailpiece.

Small mailings containing fewer than 10,000 pieces can use the same serial number for all pieces, if postage is affixed to each piece at the correct price, or all pieces are of identical weight and separated by price.

- Individually meet the eligibility requirements for automation prices according to class and shape.
- Apply unique Intelligent Mail tray barcodes (IMtb) on trays, tubs, and sacks.
- Apply unique Intelligent Mail container barcodes (IMcb) on placards for containers, such as pallets, when required.
- Schedule appointments through the Facility Access and Shipment Tracking system (FAST®) if mail is accepted at an origin facility and entered at a downstream USPS™ processing facility.
- Use an approved electronic method to transmit mailing documentation and postage statements to the Postal Service.
- If the mailing is prepared or presented on behalf of another entity, the electronic documentation (eDoc) must include additional information to support the by/for mailing relationships. Mail service providers (agents) do not have to provide by/for data for mail owners with 5,000 or fewer pieces in a mailing. All other mailings must include by/for information. The mail owner and mailing agent are described as follows:

Mail Owner: The mail owner is the business entity, organization, or individual who makes business decisions regarding the mailpiece content, directly benefits from the mailing, and ultimately pays for postage on the mailpiece directly or by way of a mailing agent.

Mailing Agent: The mailing agent is a business entity, organization, or individual acting on behalf of one or more mail owners by providing mailing services for which the mail owners compensate the mailing agent. A business entity, organization, or individual whose services define it as a mailing agent may also be considered a mail owner, but only for its own mail or the mail of its subsidiaries. Mailing agents include, but are not limited to the following: Printer, letter shop, address list provider/manager; mail preparer, postage payment provider, mailing logistics provider, mailing tracking provider, ad agency, and mailing information manager.

The Postal Service's Vision

The strategic vision of the Postal Service is to create 100 percent visibility for mail in the mail stream. This visibility provides full-service mailers with near real-time data that specifies the location of mailpieces within the postal mail stream and the delivery day.

The Postal Service continues the ongoing transformation of data visibility and evolution of technological innovations to achieve this vision.

The mailer's use of full-service Intelligent Mail is an integral part of the Postal Service's ongoing strategy to provide cost-effective and service-responsive mailing services. Efficient use of postal resources can be achieved with advance information about the content and makeup of the mail. As mail is processed and sorted, postal sorting equipment captures volume and destination information. The Postal Service built and is refining systems that make information available to downstream postal facilities for use with operational planning. The planning data enabled through full-service mailings provides significant opportunities for improvements in efficiency and service performance.

Benefits and Advantages

If all guidelines are followed and requirements met, full-service Intelligent Mail offers advantages to mailers and the Postal Service.

Advantages for Mailers

- Mailers receive free undeliverable-as-addressed information including address correction service (ACS) and nixie service. (A nixie is a mailpiece that cannot be sorted or delivered because of an incorrect, illegible, or insufficient delivery address. Nixie service enables the processing of mail that cannot be forwarded or delivered as addressed and notifies mailers electronically of the specific reason for non-delivery.)
- A mailer receives start-the-clock information indicating when the mail was accepted by the Postal Service.
- Mailers receive container, tray, bundle, and mailpiece scans from induction to destination processing.
- Mailers are able to more effectively plan operations, assess the success of advertising campaigns, and improve customer interaction.
- Mailers are provided with comprehensive information on the status of mailings as they progress through the postal mail stream.
- Visibility enables mailers to respond more effectively to customer inquiries on the status of bills, statements, catalogs, and publications.
- A mailer's annual mailing permit fee is waived when the mailer enters 90 percent or more of full-service volume using the associated permit within the year.
- The ''Mail Anywhere'' program allows the use of a single permit at any *PostalOne!*® site for mailings containing 90 percent or more of full-service mailpieces. This simplifies permit management and enables the mailer to maintain a single account to enter and pay for mailings. Full-service mailers may also use the ''Pay Anywhere'' program, which allows customers to make deposits to their permit trust accounts at any Point of Sale (POS) retail site that supports business mail entry unit (BMEU) transactions. The Mail Anywhere and Pay Anywhere processes are in pilot and will launch by July 31, 2013. To sign up for the pilot or the program after implementation, contact the *PostalOne!* Help Desk at 800–522–9085. For additional information about the programs, access RIBBS by logging on to *http://ribbs.usps.gov*.
- Simplified mail entry and acceptance through programs enabled by full-service including eInduction and Seamless Acceptance.

Advantages for the Postal Service

- Visibility into the flow of mail through the postal mail stream enables enhanced diagnostics of service performance. The ability to measure service performance is available for each full-service mailing.
- Scan data allows the Postal Service to measure the number of hours and minutes between operations.
- Scan data allows the Postal Service to identify operational bottlenecks and continue to improve service for commercial First-Class Mail, Standard Mail, Periodicals, and BPM.
- Ability to provide real-time alerts to postal operations enables employees to respond to and avoid potential service failures.
- Advance notification of volume and makeup of commercial mail enables improved resource planning.
- Ability to accurately track mail volumes as they move through the postal network enables improved management and staffing of operations.
- Simplified mail acceptance processes increase productivity. With the availability of full-service mailing data and unique identifiers, the business mail acceptance procedures are streamlined with programs such as eInduction and Seamless Acceptance.

Verification Procedures

Existing Automation Verifications

After January 26, 2014, acceptance employees will continue to perform existing verification and assessment processes. Existing verifications include but are not limited to validation of the mailpiece dimensions, shape, weight, flexibility, barcode quality, content, presort makeup, and automation eligibility. Should a mailing fail existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage. The existing thresholds used to verify and qualify automation mailings will apply.

Full-Service Acceptance Verifications

In addition to the existing verifications described above, acceptance employees perform additional verifications on full-service mailings to ensure that Intelligent Mail barcodes are present and readable on mailpieces, trays, and containers where applicable and that the mailing is presented with proper eDoc. The existing thresholds used to verify and qualify full-service mailings for readable barcodes and submission of eDoc will apply. Should a mailing fail existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage to mail at a non-automation price.

Full-Service Electronic Verification

In addition to the above verification processes, the Postal Service performs additional validations of the following information contained in the eDoc submitted with full-service mailings. The Postal Service provides detailed data from these verifications including by/for information, service type ID, mailer ID, unique barcodes (piece, handling unit, container), entry facility, and co-palletization information.

• Service Type ID: A service type ID that is provided in the IMb and contained in the eDoc is appropriate for the class of mail and service level of the mailpiece.

• Mailer ID: A mailer ID that is provided in the IMb, IMtb, and/or IMcb and contained in the eDoc is valid (registered with the USPS Mailer ID system).

• Unique Piece Barcode: An IMb contained in the eDoc is unique across mailings for 45 days. Exception: Small mailings that have fewer than 10,000 pieces, where postage is affixed to each piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, can use the same serial number for all pieces in the mailing. In this case, uniqueness is required for the serial number at the mailing level. A different serial number should be used for each mailing and the serial number cannot be repeated within 45 days.

• Unique Tray Barcode: An IMtb that contained in the eDoc is unique across mailings for 45 days. Exception: Small mailings that have fewer than 10,000 pieces can use the same serial number for all trays in the mailing, if postage is affixed to each piece at the correct price, or the pieces are of identical weight and separated by price.

• Unique Container Barcode: An IMcb contained in the eDoc is unique across mailings for 45 days.

• Co-Palletization: Co-palletized mailings must have eDoc submitted by both the origin facility and the consolidator to describe the movement of trays and sacks.

• Entry Facility: Entry facility provided in eDoc (Locale key or ZIP Code) is a valid USPS facility.

• By/For: Electronic documentation is checked to ensure that the mail owner and mailing agent identification are accurately populated.

The results of additional full-service electronic verifications are displayed in reports aggregated over a one-month period. The Postal Service continues to work with the mailing industry to share the results of these reports and address issues and gaps. No assessments will be made as a result of any additional full-service electronic verification until July 1, 2014. To develop reasonable thresholds and measure electronic documentation quality, the Postal Service will evaluate the data trends of full-service electronic verifications.

Summary of Comments and USPS Responses

The Postal Service received comments from 52 respondents within the mailing industry. These comments, in addition to feedback from the Mailers Technical Advisory Council (MTAC), Postal Customer Councils (PCC), and other outreach efforts, allowed the Postal Service to develop initiatives that can enable mailers to efficiently transition to full-service Intelligent Mail.

The Postal Service appreciates all of the valuable comments that were provided. The following concerns were expressed:

Pricing and Mail Preparation Comments

Mailer Comment

How will the Postal Service verify the 90 percent requirement to obtain the permit fee waiver? If the percentage drops below 90, is the client be assessed a charge?

Postal Service Response

The Postal Service verifies that every individual mailing meets the 90 percent full-service criteria by checking the full-service percentage on the postage statements as they are processed. If every statement meets the 90 percent full-service criteria, the permit fee will not be activated and required when it is due. If, however, a mailing fails to meet the 90 percent full-service threshold, the annual permit fee is required and activated on the date of the failure to process the mailing. The annual fee will be good for one year.

In response to industry feedback, the Postal Service reviewed an alternative approach to consider waiving the annual permit fee when the cumulative volume throughout the year remains at or over 90 percent full-service.

Mailer Comment

When a mailing fails to qualify for full-service Intelligent Mail, the penalties assessed are substantial. It is imperative that the Postal Service be as precise as possible about qualification and verification requirements.

Please clarify what is measured to validate that the full-service requirements are being met. Is there a threshold or tolerance of less than 100 percent of the pieces in a full-service mailing, yet that mailing still qualifies for automation prices?

Postal Service Response

After January 26, 2014, acceptance employees will continue to perform existing verification and assessment processes. Existing verifications include validation of the mailpiece dimensions, shape, weight, flexibility, barcode quality, content, presort makeup, and automation eligibility. Should a mailing fail existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage. The existing thresholds used to verify and qualify automation mailings will apply.

In addition to the existing verifications described above, acceptance employees perform additional verifications on full-service mailings to ensure that Intelligent Mail barcodes are present, readable, and accurate on mailpieces, trays and containers where applicable, and that the mailing is presented with electronic documentation. The existing thresholds used to verify and qualify full-service mailings will apply.

Should a mailing fail the existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage to mail at a non-automation price.

Additionally, the Postal Service performs validations of the information that is submitted with full-service mailings. The results of full-service electronic verifications are displayed in reports aggregated over a one-month period. The Postal Service continues to work with the mailing industry to share the results of these reports and address issues and gaps.

No assessments will be made as a result of any full-service electronic verification until July 1, 2014. To develop reasonable thresholds and measure electronic documentation quality, the Postal Service evaluates the data trends of full-service electronic verifications.

Mailer Comment

Our organization is concerned about the revision to DMM 705.24.1, ''Full-service automation mailings may include automation-compatible pieces without barcodes, with POSTNET barcodes, or with Intelligent Mail barcodes. Mailings of full-service automation letters must not be comingled in the same tray with automation-compatible pieces without barcodes, with POSTNET barcodes, *or with non-full-service Intelligent Mail barcodes,* and these pieces will not be used to meet the eligibility standards for full-service or receive associated benefits.''

This revision seems to overlook the realities of mail production operations. It is simply not possible to validate and ensure that every single mailpiece is 100 percent full-service. However, when operations are finalized, all pieces can be fully validated and identified in the eDoc within an appropriate tolerance.

Postal Service Response

Based on customer feedback, this language has been revised in the **Federal Register** notice, final rule. Full-service automation letters must not be comingled in the same tray with pieces without barcodes, pieces with POSTNET barcodes, or pieces with an IMb without a delivery point. Full-service automation mailpieces may be comingled in a tray with non-full-service eligible pieces with an IMb containing a delivery point.

PostalOne! and IT Systems Comments

Mailer Comment

Not all mailings eligible for automation prices are currently supported electronically by *PostalOne!* e.g. FCM bundle-based flats and FCM manifest mailings, etc. By 2014, will *PostalOne!* electronically support all mailings that are currently prepared for automation prices? If not, what will the Postal Service do regarding this issue and will the mailings continue to receive automation prices?

Postal Service Response

The Postal Service is working with the mailing industry to resolve the current technical issues preventing the upload of eDoc for all full-service automation mailings prior to January 26, 2014.

Mailer Comment

Due to technical limitations of the current Mail.dat and *PostalOne!* system architecture, mailers of Multi-line Optical Character Reader (MLOCR) bundle-based FCM flats are at risk of being excluded from participating in full-service Intelligent Mail, which would not qualify them for automation prices. How does the Postal Service plan to address these technical limitations to enable all MLOCR bundle-based mailers to participate in full-service? If the technical issues cannot be resolved prior to January 2014, are the MLOCR mailers exempted from the full-service requirement and still able to qualify for automation prices until the matter is resolved?

Postal Service Response

The Postal Service is working with the mailing industry to resolve the current technical issues for MLOCR bundled-based flats prior to January 26, 2014.

Mailer IDs (MIDs) and Customer Registration IDs (CRIDs) Comments

Mailer Comment

How will the Postal Service focus more attention and resources on resolving issues regarding systems and processes around CRID/MID assignment and maintenance? Also, how does the Postal Service plan to improve the customer-facing processes and systems, especially as it relates to CRID/MID assignments and the BCG?

Postal Service Response

There are currently three methods whereby mail service providers and mail owners can acquire 9-Digit MIDs and/or CRIDs. These methods were described in the ''Quick Step Guide to Nine-Digit MID and/or CRID Acquisition'', posted on RIBBS at *https://ribbs.usps.gov/intelligentmail_mail_id_app/documents/tech_guides/MIDCRIDAcquisitionQuickStep.pdf.*

Manual requests for MIDs and CRIDs will be handled by the Postal Service Help Desk, which allows mailers to request a ticket number and track the time to resolve issues.

In July 2013, the Postal Service will implement functionality for a fourth method that allows mail service providers to obtain CRIDs and MIDs on behalf of customers, through the Business Customer Gateway (BCG) interface. Additionally, there will be enhancements to allow users to more easily manage their profile when adding or removing business locations and services.

Mailer Comment

Our customers view the mail service provider's requests for MIDs/CRIDs as harassment rather than help. In fact, they have us log into the BCG on their behalf to obtain a MID/CRID for mailing, because they have no interest in setting this up themselves.

The Postal Service established some simpler ways for mail service providers to obtain MIDs/CRIDs, but unfortunately the methods established were not yet responsive enough to meet the needs of our customers, which force us to continue the tedious process of creating them individually. Often, we don't have 24 hours to wait for MIDs/CRIDs.

Postal Service Response

There are currently three methods through which mail service providers and mail owners can acquire 9-Digit MIDs and/or CRIDs. These methods were described in detail in the ''Quick Step Guide to Nine-Digit MID and/or CRID Acquisition'', posted on RIBBS at *https://ribbs.usps.gov/intelligentmail_mail_id_app/documents/tech_guides/MIDCRIDAcquisitionQuickStep.pdf.*

In July 2013, the Postal Service will implement functionality for a fourth method that allows mail service providers to obtain CRIDs and MIDs on behalf of their customers through the BCG interface. In addition, there are enhancements to allow users to more easily manage their profile, when adding or removing business locations and services.

Mailer Comment

There are issues with the MIDs that are required on the mailpieces, trays, and pallets. Presently, the Postal Service doesn't verify that the MIDs used in mailings are correct and authorized by the MID owner for use in a particular mailing, which could potentially lead to data going to the wrong organization.

Postal Service Response

It is the responsibility of the mail owner or mail service provider to ensure that information provided is accurate and complete. To help support mail owners and mail service providers, the

Postal Service will implement a validation tool in July 2013 that allows mail service providers to validate CRIDs and MIDs. This tool enables a mail service provider to identify/validate the owner of a MID or CRID before it is used in a mailing.

Further information on MIDs and CRIDs can be found in the ''Quick Step Guide to Nine-Digit MID and/or CRID Acquisition'', posted on RIBBS at *https://ribbs.usps.gov/intelligentmail_mail_id_app/documents/tech_guides/MIDCRIDAcquisitionQuickStep.pdf*.

By/For Requirements and Mail Quality Errors & Reporting Comments

Mailer Comment

How much time will mailers be given to take corrective action on mail quality errors, and what are the penalties for non-compliance?

Postal Service Response

After January 26, 2014, acceptance employees will continue to perform additional verifications on full-service mailings to ensure that Intelligent Mail barcodes are present and readable on mailpieces, trays, and containers where applicable, and that the mailing is presented with proper eDoc. The existing thresholds used to verify and qualify full-service mailings to ensure that barcodes are present and readable and submission of eDoc will apply. Should a mailing fail existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage to mail at a non-automation price.

In addition to the full-service verifications described above on the physical mail, the USPS performs validations of information contained in the electronic documentation submitted with full-service mailings. The results of these full-service electronic verifications are displayed in reports aggregated over a one-month period. The USPS evaluates the data trends of full-service electronic verifications to develop reasonable thresholds to measure electronic documentation quality. Results from electronic verifications should be displayed to the mailer within 48 hours of the postage statement finalization. Mailers may use the Mailer Scorecard report in the *PostalOne!* microStrategy environment to review the mailing electronic verification quality and drill into detailed information on each error.

No assessments will be made as a result of any full-service electronic verification until July 1, 2014. Information on accessing and using the Mailer Scorecard can be found on RIBBS at *http://ribbs.usps.gov*.

Mailer Comment

Please provide clarity regarding how the Postal Service plans to manage quality errors — namely: What evidence will be provided to the mailer? Are mailers allowed to fix errors? Also, if mail is disqualified from using full-service Intelligent Mail, how can it re-qualify? What is the timeframe in which the Postal Service will communicate quality errors to the mailer and mail service provider?

Postal Service Response

After January 26, 2014, acceptance employees will continue to perform additional verifications on full-service mailings to ensure that Intelligent Mail barcodes are present, and readable on mailpieces, trays, and containers where applicable, and that the mailing is presented with proper eDoc. The existing thresholds used to verify and qualify full-service mailings to ensure that barcodes are present and readable and submission of eDoc will apply. Should a mailing fail existing verifications, the mailer may choose to have the disqualified mailing returned for re-work or pay the additional postage to mail at a non-automation price.

In addition to the full-service verifications described above on the physical mail, the USPS performs validations of the information contained in the electronic documentation submitted with full-service mailings. The results of these full-service electronic verifications are displayed in reports aggregated over a one-month period. The USPS evaluates the data trends of full-service electronic verifications to develop reasonable thresholds to measure electronic documentation quality. Results from electronic verifications should be displayed to the mailer within 48 hours of the postage statement finalization.

Mailers may use the Mailer Scorecard report in the *PostalOne!* microStrategy environment to review the mailing of electronic verification quality and drill into detailed information on each error.

No assessments will be made as a result of any full-service electronic verification until July 1, 2014. Information on accessing and using the Mailer Scorecard can be found on RIBBS: *http://ribbs.usps.gov*.

Testing Environment for Mailers (TEM) and Electronic Documentation (eDoc) Comments

Mailer Comment

How will the Postal Service continue to improve systems and processes around full-service testing?

Postal Service Response

The USPS worked with the mailing industry to identify full-service gaps, and is working to implement corrections and enhancements. We implemented changes to improve system throughput, capacity, and performance. We have also enhanced our testing environment to support more production-like volume for testing and performance.

The Postal Service developed a process to authorize software vendors for electronic documentation and full-service capabilities. Use of authorized software simplifies the onboarding process for mailers. The Postal Service published the list of authorized software vendors on RIBBS at *http://ribbs.usps.gov*.

Mailers using authorized software are asked to submit a single file to TEM to show they can use their software to generate accurate eDoc. Mailers can view the postage statements and supporting documentation to ensure the accuracy of the transaction in the TEM environment. Once a mailer has submitted and reviewed the single file, the testing process is complete.

Documentation regarding the simplified TEM process can be found on RIBBS at *https://ribbs.usps.gov*.

Mailer Comment

By not offering a fully automated TEM, the Postal Service unnecessarily relies on processes that are not extensible. Mailers will likely delay full-service implementation until the end of 2013, which creates a bottleneck. The current TEM is not set up to handle a massive influx of mailers — what are your plans to address this matter?

Postal Service Response

Since October 2012, the Postal Service published a list of software products authorized for eDoc and full-service mailing scenarios. The TEM onboarding process has been simplified for mailers using an authorized software product. Mailers submit a single file to TEM that shows they are able to use the software and generate accurate eDoc. Mailers can view the postage statement and supporting documentation to ensure accuracy of the transaction in the TEM environment. Once a mailer has submitted and reviewed the single file, the testing process is complete. Further documentation regarding the simplified TEM process can be found on RIBBS.

In addition to TEM, the Postal Service is establishing a pre-production environment available for mailers to use for testing. This environment is available at the start of testing for an upcoming release.

Mailer Comment

Please clarify the following information regarding eDoc (Is this a new or existing requirement?): ''When entering full-service mailings, eDoc is required. A mailer's eDoc identifies the unique IMb applied to each mailpiece, tray, tub, sack, and container; it describes how mailpieces are linked to handling units, such as trays, tubs, and sacks; and identifies how mailpieces and handling units are linked to containers. Additionally, eDoc identifies spoilage or shortage of pieces in a mailing, the preparer of the mailing, and the mailer for whom the mailing is prepared (i.e., mail owner). Mail owner identification is required for all pieces in a full-service mailing.''

Postal Service Response

The use of detailed eDoc, including nesting and by/for information, is an existing requirement for full-service. The Postal Service allows the use of logical containers and trays to simplify the requirements to track each mailpiece to a handling unit and each handling unit to a container. Logical containers/trays allow all mail going to the same destination at the same presort level to be handled as a single logical entity. Individual mailpieces can be traced to a destination instead of a physical tray. Additional technical details on the requirements to complete eDoc for full-service can be found on RIBBS in the ''Guide to Intelligent Mail for Letters and Flats.''

Mailer Comment

We recommend that the Postal Service provide a matrix of mailing types that must comply with the eDoc standards and those which are not required to comply. Also, it is recommended that the matrix identify the requirements in which the non-supported mailings must comply to ensure automation prices. If the Postal Service plans to transition those mailing types to eDoc capabilities, then a schedule should be provided.

Postal Service Response

The Postal Service plans to support all full-service automation eligible mailings with eDoc before January 26, 2014. The following classes and mail types are covered by full-service: First-Class Mail cards, letters, and flats; Standard Mail letters and flats except for Saturation ECR flats; Periodicals letters and flats; and nonpresorted and presorted Bound Printed Matter (BPM) flats (except BPM flats entered at destination delivery units ''DDUs''). Full-service is an option but will not be required for Standard Mail enhanced carrier route (ECR) basic, high-density, and high-density plus flats.

General Comments

Mailer Comment

Under appointment scheduling, please explain ''linking'' container data. Is this a different process from ''providing'' container data?

Postal Service Response

''Linking'' container data refers to associating a container to a specific FAST appointment to notify the Postal Service that a container will arrive at a facility on a specific date or by a designated time.

Mailer Comment

Our organization is concerned about the revision to DMM 705.24.4.4, ''Unless otherwise authorized, documentation must describe how each mailpiece is linked to a uniquely identified tray or sack and how each mailpiece and tray or sack is linked to a uniquely identified container. Linking to logical trays, sacks, and containers via sibling records is an option when linking to a specific tray, sack, or container is not feasible.'' Clarification to the term ''authorized'' or at least identification of the authorization scenario is requested. For example, authorization may be warranted because of file submission methods, special agreements, or as defined in a section of the DMM or a specific guide. Similarly, clarification is necessary regarding the process to determine ''feasibility'' when allowed to use the ''logical'' or physical option. Is it a mailer or USPS decision?

Postal Service Response

Previously, the use of logical handling units and containers was limited to MLOCR mailers. Based on feedback from the mailing industry, the Postal Service will now make the logical option available to all mailers in all mailing environments. The decision to present mail in physical or logical containers is a mailer's decision.

Transitioning to Full-Service Intelligent Mail

The Postal Service continues to develop enhancements, simplify existing tools, streamline the processes for mailers to prepare mailings, and provide ease of use for all mailers to transition to full-service Intelligent Mail. The Postal Service also recognizes there are costs for mailers associated with converting to full-service Intelligent Mail.

In support of the transition to full-service Intelligent Mail, the Postal Service offers the following incentives, on-boarding simplifications, process enhancements, and self-service tools:

- Full-Service Technology Credit
  To encourage the adoption of full-service Intelligent Mail, the Postal Service will be offering a full-service Technology Credit (Tech Credit). Tech Credits will be available for $2000, $3000, or $5000 and may be redeemed as a postage credit after June 1, 2013, pending the approval of the Postal Regulatory Commission (PRC).
- Qualification Process
  Each business location that exceeded 125,000 pieces of qualifying mail volume from October 1, 2011, through September 30, 2012, is eligible to redeem one (1) Tech Credit amount. All permits and business locations have been considered for the Tech Credit program.

A mailer's qualifying volume includes:

- First-Class Mail automation cards, letters, and flats.
- Standard Mail automation letters and flats, which includes:

Letters—Automation and ECR saturation, high-density, and basic.

Flats—Automation and ECR high density and basic.

- Periodicals automation letters and flats and carrier-route letters and flats.
- BPM barcoded flats: presorted non-DDU, presorted DDU, and carrier route.

Tech Credit Amounts

- 125,001–500,000 qualifying pieces = $2,000 postage credit.
- 500,001–2,000,000 qualifying pieces = $3,000 postage credit.
- More than 2,000,000 qualifying pieces = $5,000 postage credit.

Tech Credit Redemption

The Tech Credit redemption period runs from June 1, 2013, through May 31, 2014. A qualified business location may redeem its Tech Credit amount as a postage credit when:

- The permit holder's paying permit is linked to a qualified business location.
- The postage statement bears 90 percent or more full-service pieces.
- The postage statement submission type is Mail.dat or Mail.XML.

Upon submission of an eligible postage statement, the Tech Credit will be automatically applied in full. A partial Tech Credit amount is applied to the statement if the Tech Credit amount is greater than the total postage for the postage statement. The Remaining Tech Credit amount will be applied to the next eligible statement(s).

Resources & Timeline

Detailed information regarding the Tech Credit program is available on RIBBS at *https://ribbs.usps.gov.* All of the Tech Credit information above is subject to review and approval by the PRC.

- Full-Service Certification Process for Vendors

  The Postal Service has developed a process to authorize software vendors for electronic documentation and full-service capabilities. Use of authorized software simplifies the on-boarding process for mailers. The Postal Service published the list of authorized software vendors on RIBBS at *http://ribbs.usps.gov.*

- Simplified On-boarding for Mailers

Mailers using certified software are asked to submit only a single file to TEM to show they can use the software to generate accurate eDoc. Mailers can view the postage statements and supporting documentation to ensure the accuracy of each transaction in the TEM environment. Once the mailer has submitted and reviewed the single file, the testing process is complete. Documentation regarding the simplified TEM process can be found on RIBBS at *http://ribbs.usps.gov.*

- System Simplification

Other enhancements to the systems include the following:

  - The Mail.dat® and Mail.XML™ error messages from uploading eDoc are standardized to provide explanations of irregularities more clearly and allow mailers to take corrective action.
  - The *PostalOne!* Dashboard is continually enhanced, and includes new functionalities that allow mailer-initiated job cancellations, so that mailers can cancel a job if none of the statements in the job have been finalized or accepted by a postal acceptance clerk. Also, if there is more than one statement in a job, all of the statements associated with the job are cancelled through this user interface.

- Intelligent Mail Small Business Tool

  The Intelligent Mail Small Business (IMsb) Tool is an online, self-service option for business mailers, which allows the production of a unique IMb. This online tool is accessible through the BCG. This mailing option may be used for mailings consisting of 5,000 or fewer pieces with an annual maximum threshold of 125,000 pieces. The tool may be used for mailings of FCM and Standard Mail cards, letters, or flats. Customers may use the tool to qualify for the full-service Mixed Automated Area Distribution Center (MXD AADC) and Mixed Area Distribution Center (MXD ADC) automation prices. Postage statements are submitted electronically through Postage Wizard®. More detailed information regarding this tool is available on RIBBS at *http://ribbs.usps.gov*

Requirements for Full-Service Intelligent Mail

Full-service Intelligent Mail may consist of mailpiece barcodes, tray barcodes, and container barcodes as follows:

- *Mailpiece barcode.* The IMb on letter and flat mailpieces encodes up to 31 digits of mailpiece data into 65 vertical bars. The IMb contains additional fields that encode ancillary services, identify the mailer and the class of mail, and allow unique numbering/serialization of the mailpiece. The Postal Service will issue a unique MID to each mailer using full-service Intelligent Mail, and the USPS-assigned MID must be included in the IMb. Mailers are required to uniquely number each mailpiece in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing, except for simple mailings under 10,000 pieces. A MID can be obtained through any of the three methods described in detail in the ''Quick Step Guide to Nine-Digit MID and/or CRID Acquisition'', posted on RIBBS at *https://ribbs.usps.gov/intelligentmail_mail_id_app/documents/tech_guides/MIDCRIDAcquisitionQuickStep.pdf.*
- *Tray barcode.* An IMtb is required on full-service letter trays, flat tubs. and sacks. Unlike the 10-digit tray barcode containing only currently used routing information, the 24-digit IMtb includes additional fields to identify the mailer and uniquely number each tray, tub, or sack. The mailer's USPS-assigned MID must be included in the IMtb. Mailers are required to uniquely number each tray or sack in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing, except for simple mailings under 10,000 pieces. Pieces inside each tray must be electronically linked or nested to the IMtb or to the corresponding logical tray, tub, or sack.
- *Container barcode.* An IMcb is required on all containers used to transport and enter mail at postal processing centers, such as pallets, all purpose containers (APCs), rolling stock, and gaylords. This 21-digit IMcb includes fields to identify the mailer and uniquely number each container. Mailers must include their USPS-assigned MID in the IMcb. Mailers are required to uniquely number each container in a mailing and not reuse any of the numbers for a period of 45 days from the date of mailing. Trays, tubs, or sacks inside the container must be electronically linked or nested to the IMcb.

When automation mailings are not required to be containerized (not enough mail to require a pallet or rolling stock) or the mailer does not choose to containerize when not required to do so, an IMcb is not required on placards nor is submission of IMcb records required in eDoc.

Container barcodes are not required for a FCM mailing of less than 48 linear feet of letter trays or 16 linear feet of flat tubs.

Containers barcodes are required for mailings of FCM when:

- The mailer has a customer service agreement (CSA).
- The mailing is separated into different containers by destination.
- The mailer chooses to containerize the mailing according to DMM 705.8.0.
- The mail is entered at the dock of a processing facility and meets the following conditions:

—The mail is prepared in an all-purpose container (APC), gaylord, or rolling stock.

—The mail consists of greater than or equal to 48 linear feet of letter trays, 16 linear feet of flats tubs,

—The mail is prepared on a pallet and is greater than or equal to 72 linear feet of letter trays or 24 linear feet of flat tubs.

Container barcodes are required for a Standard Mail, Periodicals, or BPM mailing when:

- The mailing is more than 500 pounds of bundles/sacks.
- The mailing is more than 72 linear feet of trays.
- The mailing is separated into different destinations by container.
- The mailing is required to be containerized under DMM 705.8.0.
- The mailer chooses to containerize the mailing under DMM 705.8.0.

Description of Intelligent Mail Barcodes

Effective January 26, 2014, when mailings are entered and full-service automation prices are claimed, mailpieces must bear unique Intelligent Mail barcodes. Full-service unique Intelligent Mail barcodes must be embedded with the following data: Barcode Identifier and OEL information (if printed on the mailpiece), Service Type Identifier (showing class of mail), Mailer Identifier, Unique Serial Number, and Delivery Point Routing Code (11-digit).

- *Barcode Identifier:* The barcode ID is a 2-digit field reserved to encode the presort identification printed in human-readable form on the Optional Endorsement Line (OEL). Should be left as ''00'' if an OEL is not printed on the mailpiece, except for automation-rate eligible flat mail with an optional endorsement line, when the IMb must contain OEL coding corresponding to the correct sortation level of each piece.
- *Service Type Identifier:* The service type identifier (STID) indicates class of mail and requested special services such as scan information or ACS.
- *Mailer Identifier:* The MID is a mandatory 6- or 9-digit identifier of the mail owner/mailing agent assigned by the Postal Service based upon documented historical mail volume of the owner/agent.
- *Serial Number:* The serial number is complementary with the MID for a combined total of 15 digits, which leaves the mailer/agent with 6 or 9 digits for unique mailpiece identification. A combination of the MID and serial number within a mail class must not be reused within 45 days of the mailing date. Small mailings can use the same serial number for all pieces when: The mailing has fewer than 10,000 pieces, postage is affixed to each piece at the correct price, and the pieces are of identical weight and separated by price. In this case, uniqueness is required at the mailing level.
- *Delivery Point Routing Code:* The delivery point routing code describes the 5-, 9-, or 11-digit field that identifies the delivery ZIP Code data in the address.

To view final specifications and detailed information on the IMb, access RIBBS at *http://ribbs.usps.gov.*

Description of Intelligent Mail Tray Barcodes

Effective January 26, 2014, when mailings are entered and full-service automation prices are claimed, mailers must use tray labels that bear 24-digit IMtb. An IMtb contains the following information:

- *ZIP Code*™: A 5-digit ZIP Code used to identify the destination of the tray or sack.
- *Content Identifier Number (CIN):* Describes tray or sack content, including presort level and class.
- *Content Label Source (L SRC):* Designates whether tray, tub, or sack contents are automation compatible.
- *Mailer ID:* A 6- or 9-digit MID assigned by the Postal Service for use in the Intelligent Mail barcodes.
- *Serial Number:* A mailer uses this field to uniquely identify individual trays, tubs, or sacks. If a 6-digit MID is assigned, the mailer has 8 digits to uniquely identify the handling units. If a 9-digit MID is assigned, the mailer has 5 digits to identify the handling units. To participate in the full-service option, the Serial Number field is populated with a unique number for each handling unit (tray or sack) in the mailing. For 45 days from the date of mailing, these serial numbers must remain unique. Small mailings that have fewer than 10,000 pieces can use the same serial number for all trays in the mailing, if postage is affixed to each piece at the correct price, or the pieces are of identical weight and separated by price.
- *Label Type:* Indicates MID field length. To access automation prices through the full-service option, mailers are required to populate all fields in the IMtb and include a unique serial number.

To view the final specifications and detailed information on the IMtb, access RIBBS at *http://ribbs.usps.gov/.*

Description of Intelligent Mail Container Barcodes

Mailers typically label containers of mail deposited with the Postal Service. For full-service, mailers must apply a unique IMcb to container placards and keep the barcode unique for at least 45 days from the date of mailing. This IMcb includes fields to identify the mailer and uniquely identify each container. To comply with the full-service standards, mailers must apply placards to all containers such as pallets, APCs, rolling stock, and gaylords separated by destination, according to the CSA or the pallet preparation standards in the DMM. Situations in which containers are not required are described above under the full-service requirements.

The IMcb has two formats. The format a mailer uses depends upon the MID assigned by the Postal Service.

The IMcb label specifications are available in two physical sizes for the IMcb barcode labels: One is the 8″ min x 11″ format available on RIBBS, and the other size is the 4″ x 7″ self-adhesive format, also available on RIBBS.

- *Application ID (Appl ID):* ''99'' indicates the source of the barcode.
- *Type Indicator:* ''M'' indicates a mailer-generated barcode.
- *Mailer ID:* A 6- or 9-digit MID assigned by the Postal Service for use in the IMb.
- *Serial Number:* A mailer uses this field to uniquely identify individual containers. If a 6-digit MID is assigned, the mailer has 12 digits to uniquely identify the containers. If a 9-digit MID is assigned, the mailer has 9 digits to identify the containers. To participate in the full-service option, the serial number field is populated with a unique number for each container in the mailing. These unique serial numbers must not be reused for 45 days from the date of mailing. To access the automation prices through the full-service option, mailers are required to populate all fields in the IMcb to include a unique serial number. To view the final specifications and detailed information on the IMcb, access RIBBS at *http://ribbs.usps.gov.*

Appointment Scheduling

All mailers whose mail is verified at a detached mail unit (DMU)/BMEU and transported by the mailer or their agent to a USPS processing facility, including mailings entered at origin and plant-verified drop shipments (PVDS), are required to schedule appointments using the FAST system at postal facilities where applicable. Mailers may schedule appointments online using the FAST Web site or they may submit appointment requests through *PostalOne!* FAST Web Services using the Mail.XML specification. For improved service performance measurement, visibility, and operational planning, the Postal Service recommends that mailers link their IMcb to FAST appointments. Mailers must provide container barcodes as part of the stand-alone content creation, appointment creation, and update processes through *PostalOne!* FAST Web Services. Mailers can also receive close-out data through FAST online reports or *PostalOne!* FAST Web Services. For more information, please log on to RIBBS at *http://ribbs.usps.gov.*

Electronic Documentation

By submitting documents electronically, mailers manage mailing data more effectively and avoid the creation of paper-based forms. Additionally, electronic submission of documents enables the Postal Service to capture efficiencies.

When entering full-service mailings, eDoc is required. A mailer's eDoc identifies the unique IMb applied to each mailpiece, tray, tub, sack, and container. It describes how mailpieces are linked to handling units, such as trays, tubs, and sacks and identifies how mailpieces and handling units are linked to containers. Additionally, eDoc identifies spoilage or shortage of pieces in a mailing, the preparer of the mailing, and the mailer for whom the mailing is prepared (i.e., mail owner). Mail owner identification is required for all pieces in a full-service mailing except when a mail owner contributed fewer than 5,000 pieces to the mailing.

The eDoc is transmitted to *PostalOne!* and used for verification, acceptance, payment, service performance measurement, and induction planning and processing. Also, *PostalOne!* can use this information to automate postage statement generation and payment processing. *PostalOne!* has the capability to provide mailers with access to their mailing documentation and financial transaction information 24 hours a day, 7 days a week. The *PostalOne!* system translates the customer-generated electronic information into postage statements and supporting documentation, such as qualification and container reports, which are used for verification, acceptance, and induction processes.

Mailings With Fewer Than 10,000 Pieces

Full-service mailings with fewer than 10,000 pieces do not require the submission of eDoc—only an electronic postage statement is required. These mailings may be electronically submitted using the Postal Wizard, Mail.XML, or Mail.dat. Mailings of fewer than 5,000 pieces can also be submitted using the IMsb tool.

For mailings of fewer than 10,000 pieces, when postage is affixed to each piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, the serial number field of each IMb can be populated with a mailing serial number unique to the mailing but common to all pieces in the mailing. This unique mailing serial number must not be reused for a period of 45 days from the date of mailing. Mailers who enter such mailings are required to submit an electronic postage statement, instead of eDoc. Unique mailing serial numbers must be provided in the electronic documentation.

Mailings With 10,000 Pieces or Greater

When full-service mailings with 10,000 or more pieces are entered, mailers are required to use Mail.dat or Mail.XML to electronically transmit mailing documentation and postage statements. eDoc must contain information about the unique ID applied to the mailpieces, placards, trays, tubs, sacks, and containers. Also, the information must describe how mailpieces are linked to handling units and how mailpieces and handling units are linked to containers.

In addition, when mailings are co-palletized, co-mingled, or combined in-house or at a different plant, eDoc that outlines the linkage among associated containers, trays, tubs, and sacks is required.

Submitting eDoc

The four methods for submitting eDoc are described as follows:

Mail.dat: Mail.dat serves as a medium for electronic data exchange, is part of the overall *PostalOne!* Application, and provides customers with the capability to electronically submit mailing documentation over a secure connection. Mail.dat uses industry-standard electronic file formats to facilitate communication. Mailing information is used to generate documentation to support verification, payment, and induction processes. Mail.dat specifications are available on RIBBS at *http://ribbs.usps.gov*.

Mail.XML: The Mail.XML is an overarching communication specification that allows mailers to transmit eDoc and manage appointments with the Postal Service. It provides mailing information to mailers on quality, address corrections, induction, and visibility. Mail.XML can also enable communication between mailers and consolidators/transporters. It is part of the overall *PostalOne!* application that enables a just-in-time connection (sending information when you are ready to share). The Mail.XML Web Service uses a Simple Object Access Protocol (SOAP) to submit information in an Extensible Markup Language (XML) format that ensures data is sent and received by applications written in various languages and deployed on various platforms. Mailing information is sent through Mail.XML to the *PostalOne!* system, where the information is stored and used to generate documentation to support verification and payment. Mail.XML specifications are available on RIBBS at *http://ribbs.usps.gov*.

Postal Wizard: The Postal Wizard is an online tool that allows mailers to use *PostalOne!* to securely enter their postage statement information. Mailers may access Postal Wizard through the BCG at *https://gateway.usps.com*.

Postal Wizard verifies completed information for an online postage statement and automatically populates the permit holder section of the postage statement based on the account number provided. It guides the user through items needed to complete the statement. Postal Wizard automatically calculates postage and validates submitted information. Once a postage statement is completed online, the electronic statement is submitted directly to the acceptance unit. For full-service mailings using the Postal Wizard, only the owner of the mailing permit receives start-the-clock feedback.

Intelligent Mail Small Business Tool: The Intelligent Mail Small Business (IMsb) Tool is an online, self-service option for small business mailers, which allows the production of a unique IMb. This online tool is accessible through the Business Customer Gateway (BCG).

PostalOne! Outage: When the *PostalOne!* system is unavailable to upload eDoc, mailers are still able to enter their mailings and receive full-service automation pricing. Mailers must maintain a daily log of mailings while the system is unavailable. Mailers are expected to submit the electronic documentation for mailings entered while *PostalOne!* was unavailable within three (3) business days of the system becoming available.

Mailer System Outage: When a mailer is unable to submit electronic documentation to the *PostalOne!* system due to an internal issue, the mailer may still enter mailings and receive full-service automation pricing. The mailer must call the help desk and log a ticket describing their technical issue, impacted sites, and anticipated resolution date. Mailers are expected to submit the electronic documentation for mailings entered while the system was unavailable within three (3) business days of system recovery.

For detailed information about electronic mailing options, access RIBBS at *http://ribbs.usps.gov*.

Additional Mailing Information Available With Full-Service

As part of the full-service program, the Postal Service is making the following information available through the online Postal Service BCG tool and *PostalOne!* Web Services (Mail.XML): Induction and processing scans for containers, trays, and bundles; start-the-clock information; address correction data; and quality and documentation error reporting information. Mailers can query the information or obtain an automated subscription. Piece scans are also included in the full-service program and available through the IMb Tracing system at *https://mailtracking.usps.gov*.

Intelligent Mail Barcode Embedded Data:

Address correction information is not available for Standard Mail flats paid at basic, high-density, high-density plus ECR prices or BPM flats paid at barcoded, presort DDU or barcoded, carrier-route prices.

The Postal Service adopts the following changes to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters and Cards

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail Letters

5.1 Basic Standards for Automation First-Class Mail Letters

[Revise the introductory text of 5.1 as follows:]

All pieces in a First-Class Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[Revise item 5.1e as follows:]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code that matches the delivery address and meet the standards in 202.5.0 and 708.4.0, whether on the piece or on an insert showing through an envelope window.

* * * * *

[Delete current 5.2 in its entirety and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]

* * * * *

240 Standard Mail

243 Prices and Eligibility

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item 6.1.2g as follows:]

g. Meet the requirements for automation letters in 201.3.0 and bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code matching the delivery address and meet the standards in 202.5.0 and 708.4.0, except for letters with simplified addresses or as provided in 6.1.2h. Letters mailed at automation carrier route (basic, high density, or saturation) prices must be in a mailing entered under full-service Intelligent Mail standards in 705.24.0. Pieces prepared with a simplified address format are exempt from the full-service, automation-compatibility, and barcode requirements.

* * * * *

6.4 High Density and High-Density Plus (Enhanced Carrier Route) Standards

6.4.1 Additional Eligibility Standards for High Density and High-Density Prices

[Revise the text of 6.4.1 as follows:]

In addition to the eligibility standards in 6.1, high density and high-density plus letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces prepared under 245.6.0. Except for pieces with a simplified address, only nonautomation high density and high-density plus letter prices apply when mailpieces are not: correctly barcoded with an Intelligent Mail barcode under 202.5.0 and 708.4.0, automation-compatible, and part of a full-service mailing under 705.24.0.

* * * * *

6.5 Saturation ECR Standards

6.5.1 Additional Eligibility Standards for Saturation Prices

[Revise the text of 6.5.1 as follows:]

In addition to the eligibility standards in 6.1, saturation letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces prepared under 245.6.0. Except for pieces with a simplified address, only nonautomation saturation letter prices apply when mailpieces are not: correctly barcoded with an Intelligent Mail barcode under 202.5.0 and 708.4.0, automation-compatible, and part of a full-service mailing under 705.24.0.

* * * * *

7.0 Eligibility Standards for Automation Standard Mail

7.1 Basic Eligibility Standards for Automation Standard Mail

[Revise the introductory text of 7.1 as follows:]

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[Revise item 7.1e as follows:]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meeting the standards in 202.5.0 and 708.4.0, either on the piece or on an insert showing through an envelope window.

* * * * *

[Delete current 7.2 in its entirety and renumber current 7.3 through 7.6 as new 7.2 through 7.5.]

* * * * *

300 Commercial Flats

* * * * *

330 First-Class Mail

333 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail Flats

5.1 Basic Standards for Automation First-Class Mail

[Revise the introductory text of 5.1 as follows:]

All pieces in a First-Class Mail automation flats mailing must meet full-service standards in 705.24.0 and:

* * * * *

[Revise item 5.1e as follows:]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meet the standards in 302.5.0 and 708.4.0, either on the piece or on an insert showing through an envelope window.

* * * * *

[Delete current 5.2 in its entirety and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

7.0 Additional Eligibility Standards for Automation Standard Mail Flats

7.1 Basic Eligibility Standards for Automation Standard Mail

[Revise the introductory text of 7.1 as follows:]

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation mailing must meet full-service standards in 705.24.0 and:

* * * * *

[Revise item 7.1e as follows:]

e. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address and meet the standards in 302.5.0 and 708.4.0, either on the piece or on an insert showing through an envelope window.

* * * * *

[Delete current 7.2 in its entirety and renumber current 7.3 through 7.4 as new 7.2 through 7.3.]

* * * * *

360 Bound Printed Matter

363 Prices and Eligibility

* * * * *

4.0 Price Eligibility for Bound Printed Matter Flats

4.1 Price Eligibility

* * * Price categories are as follows:

* * * * *

[Revise item 4.1d as follows:]

d. Barcoded Discount—Flats. The barcoded discount applies to BPM flats that meet the requirements for automation flats in 301.3.0, bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, and are part of a full-service mailing under 705.24.0. See 6.1 for more information.

* * * * *

6.0 Additional Eligibility Standards for Barcoded Bound Printed Matter Flats

6.1 Basic Eligibility Standards for Barcoded Bound Printed Matter

[Revise the text of 6.1 as follows:]

The barcode discount applies only to BPM flat-size pieces meeting the standards under 301.3.0 and bearing a unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address, and meeting the standards in 302.5.0 and 708.4.0. The pieces must be part of a full-service (under 705.24.0) nonpresorted mailing of 50 or more flat-size pieces or part of a full-service Presorted mailing of at least 300 BPM flats prepared under 365.7.0, 705.8.0, 705.14.0, and 705.24.0. The barcode discount is not available for flats mailed at Presorted DDU prices or carrier route prices.

* * * * *

[Delete current 6.2 in its entirety and renumber current 6.3 through 6.4 as new 6.2 through 6.3.]

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

[Revise the title of 15.0 as follows:]

15.0 Intelligent Mail Barcode Tracing

* * * * *

15.1 Basic Information

* * * * *

15.1.1 General Information

[Revise the text of 15.1.1 as follows:]

Participation in Intelligent Mail barcode (IMb) Tracing service is available at no charge without a subscription. Requirements for participation in IMb Tracing include:

- Use of an IMb on mailpieces entered as part of a full-service mailing under 705.24.0.
- Use of a Mailer Identifier that has been registered (through the Business Customer Gateway, accessible on *usps.com*) to receive scan data.
- Verification by the Postal Service that the IMb as printed meets all applicable postal standards.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

24.1 Description

[Revise the title of 24.0 as follows:]

24.0 Full-Service Automation Standards

24.1 Description

** * * [Add three new sentences at the end of the current text of 24.1 as follows:]*

Full-service automation mailings may include automation-compatible pieces without barcodes, with POSTNET barcodes, or with non-full-service Intelligent Mail barcodes, but these pieces will not be used to meet the eligibility standards for full-service or receive associated benefits. Full-service automation letters must not be comingled in the same tray with pieces without barcodes, pieces with POSTNET barcodes, or pieces with an IMb without a delivery point barcode. Full-service automation mailpieces may be comingled in a tray with non-full-service eligible pieces (automation-compatible under 201.3.0) with an IMb containing a delivery point barcode.

[Delete current 24.1.1 and 24.1.2 in their entirety.]

24.2 General Eligibility Standards

[Revise the introductory paragraph of 24.2 as follows:]

First-Class Mail, Periodicals, and Standard Mail letters and flats meeting eligibility requirements for automation or carrier route prices (except for Standard Mail ECR saturation flats), and Bound Printed Matter flats (except for Presorted DDU-entered and carrier route flats) are potentially eligible for full-service prices. All pieces entered under full-service pricing must:

* * * * *

[Revise item 24.2c as follows:]

c. Be part of a mailing using unique Intelligent Mail container barcodes on all destination-entry pallets and other containers optionally or required to be prepared under 8.0 or as part of a customer/supplier agreement. Pallets or approved alternate containers, with unique Intelligent Mail container barcodes, must also be used whenever a mailing is entered at the dock of a USPS-processing facility and meets minimum container/pallet volume requirements under 705.8.0. A customer/supplier agreement is authorized with a service agreement signed by the mailer, the USPS District Manager, Customer Service, and the USPS Processing and Distribution Center manager. The service agreement contains provisions regarding mailer and USPS responsibilities.

* * * * *

24.4 Preparation

* * * * *

24.4.2 Intelligent Mail Tray Labels

* * * *[Revise the second sentence of 24.4.2 as follows:]*

Mailing documentation, when required, must associate each mailpiece to a corresponding tray or sack, or to a logical tray or sack, as described in 24.4.4.

* * * * *

24.4.3 Intelligent Mail Container Placards

[Revise the second sentence of 24.4.3 as follows:]

Mailing documentation, when required, must associate each mailpiece (and tray or sack, if applicable) to a corresponding container (or a logical container) as described in 24.4.4, unless otherwise authorized by the USPS.

* * * * *

24.4.4 Electronic Documentation

[Revise the text of 24.4.4 as follows:]

Mailers must electronically submit postage statements and mailing documentation to the *PostalOne!* system. Documentation must describe how each mailpiece is linked to a uniquely identified tray or sack and how each mailpiece and tray or sack is linked to a uniquely identified container. Linking to logical trays, sacks, and containers via sibling records is an option when linking to a specific tray, sack, or container is not feasible. The documentation must also meet the requirements in *A Guide to Intelligent Mail for Letters and Flats* (at *ribbs.usps.gov*). Mailers must transmit postage statements and documentation to the *PostalOne!* system using Mail.dat, Mail.XML, or Postal Wizard (see 24.5.3).

* * * * *

24.5.3 Special Standards—Small Volume Mailings

[Revise the text of 24.5.3 as follows:]

For mailings of fewer than 10,000 pieces, when postage is affixed to each piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, the serial number field of each Intelligent Mail barcode can be populated with a mailing serial number that is unique to the mailing but common to all pieces in the mailing. This unique mailing serial number must not be reused for a period of 45 days from the date of mailing. These mailings are not required to submit electronic documentation for full-service, only an electronic postage statement. Unique mailing serial numbers must be populated in the Postal Wizard entry screen field or in the electronic documentation.

* * * * *

707 Periodicals

* * * * *

13.0 Carrier Route Eligibility

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13.4 Full-Service Intelligent Mail Eligibility Standards

[Revise the introductory text of 13.4 as follows:]

In addition to other requirements in 6.0, carrier route letters and flats eligible for full-service Intelligent Mail prices and address correction benefits under 705.24 must:

[Revise the last sentence of 13.4d as follows:]

d. * * * Letters or flats with Intelligent Mail barcodes entered under the full-service automation option must also be part of mailings that meet the standards in 705.24.

* * * * *

14.0 Barcoded (Automation) Eligibility

14.1 Basic Standards

[Revise the introductory text of 14.1 as follows:]

All pieces in a Periodicals barcoded (automation) mailing must meet the full-service standards in 705.24.0 and:

* * * * *

[Revise the first sentence of item 14.1c as follows:]

c. Bear an accurate unique Intelligent Mail barcode encoded with the correct delivery point routing code, matching the delivery address, and meeting the standards in 202.5.0 (for letters), 302.4.0 (for flats), and 708.4.0, either on the piece or on an insert showing through a window.

* * * * *

14.2 Eligibility Standards for Full-Service Automation Periodicals

[Revise the introductory text of 14.2 as follows:]

All pieces entered under the full-service automation standards must:

* * * * *

[Revise item 14.2b as follows:]

b. Be part of a mailing that meets the standards in 705.24.0.

* * * * *

708 Technical Specifications

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

6.1 General

6.1.1 Tray and Sack Labels

[Revise the text of 6.1.1 as follows:]

Intelligent Mail tray labels are the USPS-approved method to encode routing, content, origin, and mailer information on trays and sacks. Intelligent Mail tray labels are designed for optimum use with Intelligent Mail barcoded mail and have the capacity to provide unique identification throughout postal processing, but are required for use on all trays and sacks in presorted mailings.

6.1.2 Container Placards

[Revise 6.1.2 by adding items ''a'' and ''b'' as follows:]

a. Intelligent Mail container placards are not required for small mailings of Standard Mail, Periodicals, and Bound Printed Matter letters and flats when entered at a BMEU, if the mailing is less than 500 pounds of bundles or sacks and fewer than 72 linear feet of trays.

b. Intelligent Mail container placards are not required when entering mail at a co-located BMEU within the service area where mail is entered, if the mailing consists of 100 but less than 250 pounds of bundles or sacks, and at least 12 but fewer than 35 linear feet of trays.

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

6.2.2 Line 1 (Destination Line)

The destination line must meet these standards:

a. *Placement.* The destination line must be the top line of the label. An exception is that one line of extraneous information may appear above the destination line on tray and sack labels as provided in 6.3.2, and 6.3.2f. The destination line must be completely visible when placed in the label holder. Visibility is ensured if the destination line is no less than ⅛ (0.125) inch below the top of the label when the label is cut and prepared.

[Delete Exhibit 6.2.2a, Barcoded 2-inch Sack Labels, in its entirety.]

* * * * *

[Delete Exhibit 6.2.2b, Barcoded 1-inch Sack Labels, in its entirety.]

* * * * *

6.2.5 Line 3 (Origin Line)

[Revise the first sentence of 6.2.5 as follows:]

The origin line must appear below the content line, except as allowed under 6.3.4 and 6.2.5a and 6.2.5b. * * *

* * * * *

[Delete current 6.3, Additional Standards—Barcoded 2-Inch Sack Labels and Barcoded Tray Labels, and 6.4, Additional Standards—Barcoded 1-Inch Sack Labels, in their entirety.]

* * * * *

[Renumber current 6.5 as new 6.3 and revise the title as follows:]

6.3 Specific Standards for Intelligent Mail Tray Labels

6.3.1 Definitions

[Revise the text of renumbered 6.3.1 as follows:]

Intelligent Mail tray labels are 2-inch labels used on trays and sacks to provide unique identification within postal processing. 24-digit Intelligent Mail tray labels include only a 24-digit barcode printed in International Symbology Specification (ISS) Code 128 subset C symbology (see Exhibit 6.3.3). Intelligent Mail tray labels also include a human readable field designed to indicate the carrier route for carrier route mailings, display an ''AUTO'' indicator text for automation mailings, or remain blank for nonautomation mailings. Mailers using Intelligent Mail tray labels must print labels in the 24-digit Intelligent Mail tray label format. Detailed specifications for the tray label and barcode formats are at *http://ribbs.usps.gov.*

[Delete current Exhibit 6.5.1, 10/24 Transitional Intelligent Mail Tray Label, in its entirety.]

[Delete current 6.5.2, Transitional Intelligent Mail Tray Label Format, in its entirety.]

[Renumber current 6.5.3 through 6.5.7 as new 6.3.2 through 6.3.6.]

* * * * *

We will publish an amendment to 39 CFR part 111 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–08721 Filed 4–17–13; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2012–0393; FRL–9800–8]

RIN 2060–AQ38

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of trans 1-chloro-3,3,3-trifluoroprop-1-ene [Solstice™ 1233zd(E)]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule, Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of *trans* 1-chloro-3,3,3-trifluoroprop-1-ene [Solstice™ 1233zd(E)], on February 15, 2013, and a parallel proposed rule to revise the definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). The direct final action added *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that the compound makes a negligible contribution to tropospheric ozone formation. Because EPA received one adverse comment, we are withdrawing the direct final rule.

DATES: Effective April 18, 2013, the EPA withdraws the direct final rule amendments published at 78 FR 11101 on February 15, 2013.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711; telephone: (919) 541–3356; fax: (919) 541–0824; email address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published in the **Federal Register** a direct final rule at 78 FR 11101 and a parallel proposed rule at 78 FR 11119 on February 15, 2013, to revise the definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA. If it had become effective, this direct final action would have added Solstice™ 1233zd(E) to the list of compounds excluded from the definition of VOCs on the basis that the compound makes a negligible contribution to tropospheric ozone formation.

The direct final rulemaking action announced that the direct final rule would be withdrawn if EPA received any adverse comments by April 1, 2013. The EPA received one adverse comment in a timely manner. With this notice, EPA is withdrawing the February 15, 2013, direct final rulemaking action pertaining to the exemption of Solstice™ 1233zd(E) from the VOC definition. All public comments that were received will be addressed in a final rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 10, 2013.

Bob Perciasepe,

Acting Administrator.

[FR Doc. 2013–09156 Filed 4–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

Mandatory Greenhouse Gas Reporting

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 96 to 99, revised as of July 1, 2012, on page 768, in § 98.226, in paragraph (n) introductory text, the last sentence is removed.

[FR Doc. 2013–09263 Filed 4–17–13; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 13, 80 and 87

[WT Docket No. 10–177; FCC 13–4]

Commercial Radio Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules concerning commercial radio operator licenses for maritime and aviation radio stations in order to reduce administrative burdens in the public's interest.

DATES: Effective May 20, 2013, except for amendments to §§ 1.913(d)(1)(vi), 13.9(c), and 13.13(c), which contain information collection requirements that are not effective until approved by the Office of Management and Budget (''OMB''). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1306, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order* (*R&O*), WT Docket No. 10–177, FCC 13–4, adopted January 8, 2013, and released January 8, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at *http://www.fcc.gov/Daily_Releases/Daily_Digest/2013/130109.html*. The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Federal Communications Commission's (Commission) rules require that a person who operates, maintains, or conducts the mandatory inspection of certain maritime and aviation radio stations hold an appropriate commercial radio operator license. The Commission initiated this proceeding to amend the part 13 Commercial Radio Operator rules, and related rules in parts 0, 1, 80, and 87 regarding certain functions performed by licensed commercial radio operators, to determine which rules could be clarified, streamlined, or eliminated in order to reduce administrative burdens and make the rules easier to use. The Commission takes the following significant actions in the *R&O* in WT Docket No. 10–177: (1) Consolidating the three classes of radiotelegraph operator's certificates; (2) eliminating redundant and outdated restrictive endorsements; (3) modifying certain procedural and recordkeeping requirements applicable to commercial operator license examination managers (COLEMs); and (4) clarifying the rules that pertain to log-keeping requirements. In addition, we decline to change the current process for maintaining question pools, and the rules that pertain to equipment testing intervals.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

2. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

3. In the present document, the Commission has assessed the effects of our requirements that COLEMs filing applications on behalf of applicants submit the information electronically, and believe the burden will be minimal. Therefore, we find that these modified information collection requirements will not impose a substantial burden on businesses with fewer than 25 employees.

B. Report to Congress

4. The Commission will send a copy of this *R&O* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making NPRM,* in WT Docket 10–177, at 75 FR 66709, October 29, 2010. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

6. We believe it is appropriate to review our regulations relating to commercial radio operators to determine which rules can be clarified, streamlined or eliminated. In this *R&O,* we make miscellaneous amendments that are intended to clarify part 13 rules, including the elimination of rules that refer to outdated services, equipment, and technology. Specifically, to reflect advancements in the radio telegraph technology, by this *R&O,* the Commission ceases to grant new First Class Radiotelegraph Operator's Certificates because the one-year radiotelegraph experience requirement is almost impossible to meet, and consolidates the remaining two classes of radiotelegraph operator's certificates in one. It also eliminates redundant and outdated restrictive endorsements; modifies certain procedural and recordkeeping requirements applicable to COLEMs; and clarifies the rules that pertain to log-keeping requirements. In addition, this *R&O* makes changes to rules contained in parts 0, 1, 80, and 87 that relate to commercial radio operator services.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. There were no comments that specifically addressed the IRFA. Nonetheless, we have considered the potential impact of the rules adopted herein on small entities, and conclude that such impact would be minimal, in terms of measurable economic costs associated with compliance with the rules.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms

''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. Commercial radio licenses are issued only to individuals. Individuals are not ''small entities'' under the RFA.

10. Individual licensees are tested by COLEMs. The Commission has not developed a definition for a small business or small organization that is applicable for COLEMs. All or almost all of the nine COLEM organizations would appear to meet the RFA definition for small business or small organization.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

11. COLEMs would be required to retain certain records for three years, instead of the existing one-year retention period; but would submit that information to the Commission only upon request, instead submitting it on a regular schedule as occurs presently. This would effectively eliminate the existing economic burden related to the reporting requirement, and it would not create any additional measurable economic burden in connection with the extended recordkeeping requirement. COLEMs would also be required to provide examination results to examinees within three business days, and to use electronic filing when submitting applications on behalf of examinees. Because almost all COLEMs already meet both of these requirements, this also would create no additional economic burden on COLEMs.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe the steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

13. We believe the changes adopted in this *R&O* will promote flexibility and more efficient use of the spectrum, without creating administrative burdens on COLEMs. Many of the adopted changes constitute clarification of existing requirements or elimination of reporting requirements and other rules that are outdated. No commenter identified any less burdensome alternatives that would be consistent with the item's objectives and the Commission's goals and responsibilities.

F. Report to Congress

14. The Commission will send a copy of the *R&O* in WT Docket No. 10–177, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress and the Congressional Budget Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O* in WT Docket No. 10–177, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* in WT Docket No. 10–177 and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 13

Communications equipment, Radio.

47 CFR Part 80

Communications equipment, Radio.

47 CFR Part 87

Air transportation, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 13, 80, and 87 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for Part 0 continues to read as follows:

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

■ 2. Section 0.111 is amended by revising paragraph (e) to read as follows:

§ 0.111 Functions of the Bureau.

* * * * *

(e) Coordinate with and assist the Wireless Telecommunications Bureau with respect to the Commission's privatized ship radio inspection program.

* * * * *

■ 3. Section 0.131 is amended by revising paragraph (j) and adding paragraphs (r)(1) and (r)(2) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Administers the Commission's commercial radio operator program (part 13 of this chapter); the Commission's program for registration, construction, marking and lighting of antenna structures (part 17 of this chapter), and the Commission's privatized ship radio inspection program (part 80 of this chapter).

* * * * *

(r)(1) Extends the Communications Act Safety Radiotelephony Certificate for a period of up to 90 days beyond the specified expiration date.

(2) Grants emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

§ 0.314 [Amended]

■ 4. Section 0.314 is amended by removing paragraph (b), and redesignating paragraphs (c) through (j) as paragraphs (b) through (i).

■ 5. Section 0.483 is amended by revising paragraph (b) to read as follows:

§ 0.483 Applications for amateur or commercial radio operator licenses.

* * * * *

(b) Application filing procedures for commercial radio operator licenses are set forth in part 13 of this chapter.

§ 0.489 [Removed and reserved].

■ 6. Section 0.489 is removed and reserved.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 8. Section 1.85 is revised to read as follows:

§ 1.85 Suspension of operator licenses.

Whenever grounds exist for suspension of an operator license, as provided in § 303(m) of the Communications Act, the Chief of the Wireless Telecommunications Bureau, with respect to amateur and commercial radio operator licenses, may issue an order suspending the operator license. No order of suspension of any operator's license shall take effect until 15 days' notice in writing of the cause for the proposed suspension has been given to the operator licensee, who may make written application to the Commission at any time within the said 15 days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have 15 days in which to mail the said application. In the event that physical conditions prevent mailing of the application before the expiration of the 15-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be designated for hearing by the Chief, Wireless Telecommunications Bureau and said suspension shall be held in abeyance until the conclusion of the hearing. Upon the conclusion of said hearing, the Commission may affirm, modify, or revoke said order of suspension. If the license is ordered suspended, the operator shall send his operator license to the Mobility Division, Wireless Telecommunications Bureau, in Washington, DC, on or before the effective date of the order, or, if the effective date has passed at the time notice is received, the license shall be sent to the Commission forthwith.

■ 9. Section 1.913 is amended by revising paragraph (d)(1)(vi) to read as follows:

§ 1.913 Application and notification forms; electronic and manual filing.

* * * * *

(d) * * *

(1) * * *

(vi) Part 13 Commercial Radio Operators (individual applicants only; commercial operator license examination managers must file electronically, see § 13.13(c) of this part); and

* * * * *

PART 13—COMMERCIAL RADIO OPERATORS

■ 10. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 11. Section 13.5 is revised to read as follows:

§ 13.5 Licensed commercial radio operator required.

Rules that require FCC station licensees to have certain transmitter operation, maintenance, and repair duties performed by a commercial radio operator are contained in parts 80 and 87 of this chapter.

■ 12. Section 13.7 is amended by revising paragraphs (b) introductory text, (b)(1) through (b)(3) and (c),, redesignating paragraphs (b)(4) through (b)(11) as paragraphs (b)(5) through (b)(12), and adding a new paragraph (b)(4).

The revisions and additions read as follows:

§ 13.7 Classification of operator licenses and endorsements.

* * * * *

(b) There are twelve types of commercial radio operator licenses, certificates and permits (licenses). The license's ITU classification, if different from its name, is given in parentheses.

(1) First Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(2) Second Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new Second Class Radiotelegraph Operator's Certificates will be accepted for filing.

(3) Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Beginning May 20, 2013, no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

(4) Radiotelegraph Operator License.

* * * * *

(c) There are three license endorsements affixed by the FCC to provide special authorizations or restrictions. Endorsements may be affixed to the license(s) indicated in parentheses.

(1) Ship Radar Endorsement (First and Second Class Radiotelegraph Operator's Certificates, Radiotelegraph Operator License, General Radiotelephone Operator License, GMDSS Radio Maintainer's License).

(2) Six Months Service Endorsement (First and Second Class Radiotelegraph Operator's Certificates, Radiotelegraph Operator License)

(3) Restrictive endorsements relating to physical disability, English language or literacy waivers, or other matters (all licenses).

* * * * *

■ 13. Section 13.8 is amended by revising paragraphs (a), (b), (d), (e), and (f), and adding new paragraph (g), to read as follows:

§ 13.8 Authority conveyed.

* * * * *

(a) A First Class Radiotelegraph Operator's Certificate conveys all of the operating authority of the Second Class Radiotelegraph Operator's Certificate, the Third Class Radiotelegraph Operator's Certificate, the Radiotelegraph Operator License, the Restricted Radiotelephone Operator Permit, and the Marine Radio Operator Permit.

(b) A Radiotelegraph Operator License conveys all of the operating authority of the Second Class Radiotelegraph Operator's Certificate, which conveys all of the operating authority of the Third Class Radiotelegraph Operator's Certificate, the Restricted Radiotelephone Operator Permit, and the Marine Radio Operator Permit.

* * * * *

(d) A General Radiotelephone Operator License conveys all of the operating authority of the Marine Radio Operator Permit and the Restricted Radiotelephone Operator Permit.

(e) A GMDSS Radio Operator's License conveys all of the operating authority of the Marine Radio Operator Permit and the Restricted Radiotelephone Operator Permit.

(f) A GMDSS Radio Maintainer's License conveys all of the operating authority of the General Radiotelephone Operator License, the Marine Radio Operator Permit, and the Restricted Radiotelephone Operator Permit.

(g) A Marine Radio Operator Permit conveys all of the authority of the Restricted Radiotelephone Operator Permit.

■ 14. Section 13.9 is amended by revising paragraphs (b), (c), (d)(1), (d)(2), and (f)(4), and adding paragraph (d)(3) to read as follows:

§ 13.9 Eligibility and application for new license or endorsement.

* * * * *

(b) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator License, Ship Radar Endorsement, Six Months Service Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, GMDSS Radio Operator/Maintainer License, Restricted

Radiotelephone Operator Permit, or Restricted Radiotelephone Operator Permit–Limited Use must be filed on FCC Form 605 in accordance with § 1.913 of this chapter.

(c) Each application for a new General Radiotelephone Operator License, Marine Radio Operator Permit, Radiotelegraph Operator License, Ship Radar Endorsement, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination Element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application on behalf of the applicant, an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year. When acting on behalf of qualified examinees, the COLEM must forward all required data to the FCC electronically.

(d) * * *

(1) An unexpired (or within the grace period) FCC-issued commercial radio operator license: Except as noted in paragraph (d)(3) of this section, the written examination and telegraphy Element(s) required to obtain the license held;

(2) An expired or unexpired FCC-issued Amateur Extra Class operator license grant granted before April 15, 2000: Telegraphy Elements 1 and 2; and

(3) An FCC-issued Third Class Radiotelegraph Operator's Certificate that was renewed as a Marine Radio Operator Permit (*see* § 13.13(b) of this chapter) that is unexpired (or within the grace period): Telegraphy Elements 1 and 2.

* * * * *

(f) * * *

(4) The applicant held a FCC-issued First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License during this entire six month qualifying period; and

* * * * *

■ 15. Section 13.10 is revised to read as follows:

§ 13.10 Licensee address.

In accordance with § 1.923 of this chapter, all applicants (except applicants for a Restricted Radiotelephone Operator Permit or a Restricted Radiotelephone Operator Permit–Limited Use) must specify an address where the applicant can receive mail delivery by the United States Postal Service. Suspension of the operator license may result when correspondence from the FCC is returned as undeliverable because the applicant failed to provide the correct mailing address.

■ 16. Section 13.11 is amended by revising paragraph (a) to read as follows:

§ 13.11 Holding more than one commercial radio operator license.

(a) An eligible person may hold more than one commercial operator license.

* * * * *

■ 17. Section 13.13 is revised to read as follows:

§ 13.13 Application for a renewed or modified license.

(a) Each application to renew a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License must be made on FCC Form 605. The application must be accompanied by the appropriate fee and submitted in accordance with § 1.913 of this chapter. Beginning May 20, 2013, First and Second Class Radiotelegraph Operator's Certificates will be renewed as Radiotelegraph Operator Licenses, and Third Class Radiotelegraph Operator's Certificates will be renewed as Marine Radio Operator Permits.

(b) If a license expires, application for renewal may be made during a grace period of five years after the expiration date without having to retake the required examinations. The application must be accompanied by the required fee and submitted in accordance with § 1.913 of this chapter. During the grace period, the expired license is not valid. A license renewed during the grace period will be effective as of the date of the renewal. Licensees who fail to renew their licenses within the grace period must apply for a new license and take the required examination(s). Beginning May 20, 2013, no applications for new First, Second, or Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

(c) Each application involving a change in operator class must be filed on FCC Form 605. Each application for a commercial operator license involving a change in operator class must be accompanied by the required fee, if any, and submitted in accordance with § 1.913 of this chapter. The application must include an original PPC(s) from a COLEM(s) showing that the applicant has passed the necessary examination Element(s) within the previous 365 days when the applicant files the application. If a COLEM files the application on behalf of the applicant, an original PPC(s) is not required. However, the COLEM must keep the PPC(s) on file for a period of 1 year. When acting on behalf of qualified examinees, the COLEM must forward all required data to the FCC electronically.

(d) Provided that a person's commercial radio operator license was not revoked, or suspended, and is not the subject of an ongoing suspension proceeding, a person holding a General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator License, GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License, who has an application for another commercial radio operator license which has not yet been acted upon pending at the FCC and who holds a PPC(s) indicating that he or she passed the necessary examination(s) within the previous 365 days, is authorized to exercise the rights and privileges of the license for which the application is filed. This temporary conditional operating authority is valid for a period of 90 days from the date the application is received. This temporary conditional operating authority does not relieve the licensee of the obligation to comply with the certification requirements of the Standards of Training, Certification and Watchkeeping (STCW) Convention. The FCC, in its discretion, may cancel this temporary conditional operating authority without a hearing.

(e) An applicant will be given credit for an examination element as specified below:

(1) An unexpired (or within the grace period) FCC-issued commercial radio operator license: Except as noted in paragraph (e)(3) of this section, the written examination and telegraphy Element(s) required to obtain the license held;

(2) An expired or unexpired FCC-issued Amateur Extra Class operator license grant granted before April 15, 2000: Telegraphy Elements 1 and 2; and

(3) An FCC-issued Third Class Radiotelegraph Operator's Certificate that was renewed as a Marine Radio Operator Permit (*see* § 13.13(b) of this chapter) that is unexpired (or within the grace period): Telegraphy Elements 1 and 2.

■ 18. Section 13.15 is revised to read as follows:

§ 13.15 License term.

First Class Radiotelegraph Operator's Certificates, Second Class Radiotelegraph Operator's Certificates, and Third Class Radiotelegraph Operator's Certificates are normally valid for a term of five years from the date of issuance. All other commercial radio operator licenses are normally valid for the lifetime of the holder.

■ 19. Section 13.17 is amended by removing paragraph (d), redesignating paragraph (e) as paragraph (d), and revising paragraphs (a), (b), and (c) to read as follows:

§ 13.17 Replacement license.

(a) Each licensee or permittee whose original document is lost, mutilated, or destroyed may request a replacement. The application must be accompanied by the required fee and submitted to the address specified in part 1 of the rules.

(b) Each application for a replacement General Radiotelephone Operator License, Marine Radio Operator Permit, First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Third Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator Certificate, GMDSS Radio Operator's License, Restricted GMDSS Radio Operator's License, GMDSS Radio Maintainer's License, or GMDSS Radio Operator/Maintainer License must be made on FCC Form 605 and must include a written explanation as to the circumstances involved in the loss, mutilation, or destruction of the original document.

(c) Each application for a replacement Restricted Radiotelephone Operator Permit or Restricted Radiotelephone Operator Permit-Limited Use must be on FCC Form 605.

* * * * *

■ 20. Section 13.19 is amended by revising paragraph (b)(3) to read as follows:

§ 13.19 Operator's responsibility.

* * * * *

(b) * * *

(3) The class, serial number, and expiration date (if applicable) of the license when the FCC has issued the operator a license; or the PPC serial number(s) and date(s) of issue when the operator is awaiting FCC action on an application.

* * * * *

■ 21. Section 13.201 is amended by removing paragraphs (b)(1) and (b)(3), redesignating paragraph (b)(2) as (b)(1) and paragraphs (b)(4) through (9) as paragraphs (b)(2) through (7), and revising redesignated paragraph (b)(1) to read as follows:

§ 13.201 Qualifying for a commercial operator license or endorsement.

* * * * *

(b) * * *

(1) Radiotelegraph Operator License.

(i) Telegraphy Elements 1 and 2;

(ii) Written Elements 1 and 6.

* * * * *

■ 22. Section 13.203 is amended by revising paragraph (a)(1) and (a)(2), and by removing paragraphs (a)(3), (b)(3), and (b)(4), and redesignating paragraphs (a)(4) through (8) as paragraphs (a)(3) through (7) to read as follows:

§ 13.203 Examination elements.

(a) * * *

(1) Element 1: Basic radio law and operating practice with which every maritime radio operator should be familiar. Questions concerning provisions of laws, treaties, regulations, and operating procedures and practices generally followed or required in communicating by means of radiotelephone stations.

(2) Element 3: General radiotelephone. Questions concerning electronic fundamentals and techniques required to adjust, repair, and maintain radio transmitters and receivers at stations licensed by the FCC in the aviation and maritime radio services.

* * * * *

■ 23. Section 13.209 is amended by revising paragraphs (d), and (g), and by removing paragraph (e), and redesignating paragraphs (f) through (j) as (e) through (i) to read as follows:

§ 13.209 Examination procedures.

* * * * *

(d) Passing a telegraphy examination. Passing a telegraphy receiving examination is adequate proof of an examinee's ability to both send and receive telegraphy. The COLEM, however, may also include a sending segment in a telegraphy examination.

(1) To pass a receiving telegraphy examination, an examinee is required to receive correctly the message by ear, for a period of 1 minute without error at the rate of speed specified in § 13.203(b).

(2) To pass a sending telegraphy examination, an examinee is required to send correctly for a period of one minute at the rate of speed specified in § 13.203(b).

* * * * *

(g) No applicant who is eligible to apply for any commercial radio operator license shall, by reason of any physical disability, be denied the privilege of applying and being permitted to attempt to prove his or her qualifications (by examination if examination is required) for such commercial radio operator license in accordance with procedures established by the COLEM.

* * * * *

■ 24. Section 13.211 is amended by revising paragraph (e) to read as follows:

§ 13.211 Commercial radio operator license examination.

* * * * *

(e) Within 3 business days of completion of the examination Element(s), the COLEM must provide the results of the examination to the examinee and the COLEM must issue a PPC to an examinee who scores a passing grade on an examination Element.

* * * * *

■ 25. Section 13.217 is revised to read as follows:

§ 13.217 Records.

Each COLEM recovering fees from examinees must maintain records of expenses and revenues, frequency of examinations administered, and examination pass rates. Records must cover the period from January 1 to December 31 of the preceding year and must be submitted as directed by the Commission. Each COLEM must retain records for 3 years and the records must be made available to the FCC upon request.

PART 80—STATIONS IN THE MARITIME SERVICES

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

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 27. Section 80.59 is amended by revising the note and table in paragraph (a)(1), and paragraph (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) * * *

(1) * * *

Note: Nothing in this section prohibits Commission inspectors from inspecting ships. The mandatory inspection of U.S. vessels must be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, First Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License in accordance with the following table:

Category of vessel	Minimum class of FCC license required by private sector technician to conduct inspection—only one license required			
	General radiotelephone operator license	GMDSS radio maintainer's license	Radiotelegraph operator license (formerly second class radiotelegraph operator's certificate)	First class radiotelegraph operator's certificate.
Radiotelephone equipped vessels subject to 47 CFR part 80, subpart R or S.	√	√	√	√
GMDSS equipped vessels subject to 47 CFR part 80, subpart W.	....	√	....	....

* * * * *

(b) Inspection and certification of a ship subject to the Great Lakes Agreement. The FCC will not inspect Great Lakes Agreement vessels. An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, a First Class Radiotelegraph Operator's Certificate, or a Radiotelegraph Operator License. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to § 80.59(b).

* * * * *

■ 28. Section 80.151 is amended by revising paragraphs (b)(9) through (11), adding a new paragraph (b)(12), and revising paragraphs (c)(1) through (3) to read as follows:

§ 80.151 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(9) T–3. Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Beginning May 20, 2013, no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

(10) T–2. Second Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new Second Class Radiotelegraph Operator's Certificates will be accepted for filing.

(11) T–1. First Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(12) T. Radiotelegraph Operator License.(c) * * *

(1) Ship Radar endorsement (First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator License, General Radiotelephone Operator License).

(2) Six Months Service endorsement (First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator License).

(3) Restrictive endorsements; relating to physical disabilities, English language or literacy waivers, or other matters (all licenses).

■ 29. Section 80.157 is revised to read as follows:

§ 80.157 Radio officer defined.

A *radio officer* means a person holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License issued by the Commission, who is employed to operate a ship radio station in compliance with Part II of Title II of the Communications Act. Such a person is also required to be licensed as a *radio officer* by the U.S. Coast Guard when employed to operate a ship radiotelegraph station.

■ 30. Section 80.159 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.159 Operator requirements of Title III of the Communications Act and the Safety Convention.

(a) Each telegraphy passenger ship equipped with a radiotelegraph station in accordance with Part II of Title III of the Communications Act must carry two radio officers holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License.

(b) Each cargo ship equipped with a radiotelegraph station in accordance with Part II of Title II of the Communications Act and which has a radiotelegraph auto alarm must carry a radio officer holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License who has had at least six months service as a radio officer on board U.S. ships. If the radiotelegraph station does not have an auto alarm, a second radio officer who holds a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License must be carried.

* * * * *

■ 31. Section 80.165 is amended by revising the table entry for ''Ship Morse telegraph'' to read as follows:

§ 80.165 Operator requirements for voluntary stations.

MINIMUM OPERATOR LICENSE

Ship Morse telegraph	T.
* * * * *	

■ 32. Section 80.167 is amended by revising the introductory text to read as follows:

§ 80.167 Limitations on operators.

The operator of maritime radio equipment other than T–1, T–2, T, or G licensees must not:

* * * * *

■ 33. Section 80.169 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.169 Operators required to adjust transmitters or radar.

(a) All adjustments of radio transmitters in any radiotelephone station or coincident with the installation, servicing, or maintenance of such equipment which may affect the proper operation of the station, must be performed by or under the immediate supervision and responsibility of a person holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator

License, or General Radiotelephone Operator License.

(b) Only persons holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, or Radiotelegraph Operator License must perform such functions at radiotelegraph stations transmitting Morse code.

* * * * *

■ 34. Section 80.203 is amended by revising paragraph (b)(3) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(4) of this section, programming of authorized channels must be performed only by a person holding a First Class Radiotelegraph Operator's Certificate, Second Class Radiotelegraph Operator's Certificate, Radiotelegraph Operator License, or General Radiotelephone Operator License using any of the following procedures:

* * * * *

■ 35. Section 80.401 is amended by revising the table and note 5 to read as follows:

§ 80.401 Station documents requirement.

* * * * *

LEGEND:
R = REQUIRED

DOCUMENTS →

	Radio Station Category	Station License	Appropriate Operator Authorization	Station Logs	Appropriate Safety Convention Certificate	Communications Act Safety Certificate	Great Lakes Radio Agreement Safety Certificate	Bridge to Bridge Act Safety Certificate	Part 80; FCC Rules and Regulations	Alphabetical List of Maritime Mobile Call Signs	List of Ship Stations	Manual for Use by Maritime Mobile (M/M) Service & M/M Satellite Service	List of Coast Stations	List of Radiodetermination and Special Services Stations	Station Equipment Records	GMDSS Master Plan	NGA Publication 117	Admiralty List of Radio Signals	IMO Circ. 7
Shipboard:	Cargo Ships (300 gross tons and up)	R1	R	R	R				R	R	R	R	R	R		R5	R5	R5	R5
	Passenger Vessels – SOLAS	R1	R	R	R				R	R	R	R	R2	R		R5	R5	R5	R5
	Passenger Vessels – Domestic	R1	R	R		R			R										
	Telephone; Great Lakes Radio Agreement	R	R	R4			R4												
	Telephone; Bridge-to-Bridge Act	R	R	R				R											
	Radar	R																	
	On Board	R													R				
	Voluntary	R	R																
Land:	Public Coast (MF)	R	R	R					R	R3	R3	R3							
	Public Coast (HF)	R	R	R					R	R	R	R							
	Public Coast (VHF)	R	R	R					R										
	Private Coast	R	R																
	Radio Determination	R	R																
	Operational Fixed	R	R																
	Maritime Support	R	R																
	Alaska – Public Fixed	R	R	R															
	Alaska – Private Fixed	R	R																
Ship/Coast:	Marine Utility	R	R																

Notes: * * *

5. The requirements for having the GMDSS Master Plan, NGA Publication 117, Admiralty List of Radio Signals or IMO Circ. 7 are satisfied by having any one of those four documents.

■ 36. Section 80.409 is amended by revising paragraphs (e)(3) through (13), (f) introductory text, (f)(1) introductory text, (f)(1)(i)(E), (f)(2) introductory text, and (f)(3) to read as follows:

§ 80.409 Station logs.

* * * * *

(e) * * *

(3) The time of any inadvertent transmissions of distress, urgency and safety signals including the time and method of cancellation.

(4) An entry that pre-departure equipment checks were satisfactory and that required publications are on hand. Daily entries of satisfactory tests to ensure the continued proper functioning of GMDSS equipment shall be made.

(5) A daily statement about the condition of the required radiotelephone equipment, as determined by either normal communication or test communication;

(6) A weekly entry that:

(i) The proper functioning of digital selective calling (DSC) equipment has been verified by actual communications or a test call;

(ii) The portable survival craft radio gear and radar transponders have been tested; and

(iii) The EPIRBs have been inspected.

(7) An entry at least once every thirty days that the batteries or other reserve power sources have been checked and are functioning properly.

(8) Results of required equipment tests, including specific gravity of lead-acid storage batteries and voltage reading of other types of batteries provided as a part of the compulsory installation;

(9) Results of inspections and tests of compulsorily fitted lifeboat radio equipment;

(10) When the master is notified about improperly operating radiotelephone equipment.

(11) At the beginning of each watch, the Officer of the Navigational Watch, or GMDSS Operator on watch, if one is provided, shall ensure that the navigation receiver is functioning properly and is interconnected to all GMDSS alerting devices which do not have integral navigation receivers, including: VHF DSC, MF DSC, satellite EPIRB and HF DSC or INMARSAT SES. On a ship without integral or directly connected navigation receiver input to GMDSS equipment, the Officer of the Navigational Watch, or GMDSS Operator on watch, shall update the embedded position in each equipment. An appropriate log entry of these actions shall be made.

(12) An entry describing any malfunctioning GMDSS equipment and another entry when the equipment is restored to normal operation.

(13) A GMDSS radio log entry shall be made whenever GMDSS equipment is exchanged or replaced (ensuring that ship MMSI identifiers are properly updated in the replacement equipment), when major repairs to GMDSS equipment are accomplished, and when annual GMDSS inspections are conducted.

(f) *Applicable radiotelephone log entries.* The log entries listed in paragraph (e) of this section are applicable as follows (vessels subject to the Global Maritime Distress and Safety System (GMDSS) should also refer to subpart W of this Part for additional guidance on maintenance of station logs):

(1) Radiotelephony stations subject to the Communications Act and/or the Safety Convention must record entries indicated by paragraphs (e)(1) through (e)(13) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information.

(i) * * *

(E) The inspector's signed and dated certification that the vessel meets the requirements of the Communications Act and, if applicable, the Safety Convention and the Bridge-to-Bridge Act contained in subparts R, S, U, or W of this part and has successfully passed the inspection.

* * * * *

(2) Radiotelephony stations subject to the Great Lakes Agreement and the Bridge-to-Bridge Act must record entries indicated by paragraphs (e)(1), (3), (5), (6), (7), (8), (10), (11), and (13), and of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information:

* * * * *

(3) Radiotelephony stations subject to the Bridge-to-Bridge Act must record entries indicated by paragraphs (e)(1), (3), (5) (6), (7), (10), and (11) of this section.

■ 37. Section 80.415 is amended by revising paragraph (b)(2) to read as follows:

§ 80.415 Publications.

* * * * *

(b) * * *

(2) U.S. NGA Publication 117 may be purchased from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, telephone 202–512–1800.

* * * * *

■ 38. Section 80.953 is amended by revising paragraph (b) introductory text to read as follows:

§ 80.953 Inspection and certification.

* * * * *

(b) An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

* * * * *

■ 39. Section 80.1005 is revised to read as follows:

§ 80.1005 Inspection of station.

The bridge-to-bridge radiotelephone station will be inspected on vessels subject to regular inspections pursuant to the requirements of Parts II and III of Title II of the Communications Act, the Safety Convention or the Great Lakes Agreement at the time of the regular inspection. If after such inspection, the Commission determines that the Bridge-to-Bridge Act, the rules of the Commission and the station license are met, an endorsement will be made on the appropriate document. The validity of the endorsement will run concurrently with the period of the regular inspection. Each vessel must carry a certificate with a valid endorsement while subject to the Bridge-to-Bridge Act. All other bridge-to-bridge stations will be inspected from time to time. An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Radiotelegraph Operator License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by § 80.409(f).

■ 40. Section 80.1085 is amended by revising paragraph (b) to read as follows:

§ 80.1085 Ship radio equipment–General.

* * * * *

(b) Ships must carry either the most recent edition of the IMO publication entitled GMDSS Master Plan of Shore-Based Facilities, the U.S. NGA Publication 117, or the Admiralty List of Radio Signals Volume 5 Global Maritime Distress and Safety System. Notice of new editions will be published on the Commission's Wireless Telecommunications Bureau Web page under ''Marine Services'' and information will be provided about obtaining the new document.

* * * * *

■ 41. Section 80.1129 is amended by revising paragraph (b) to read as follows:

§ 80.1129 Location and homing signals.

* * * * *

(b) Homing signals are those locating signals which are transmitted by mobile units in distress, or by survival craft, for the purpose of providing searching units with a signal that can be used to determine the bearing to the transmitting stations.

* * * * *

PART 87—AVIATION SERVICES

■ 42. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 43. Section 87.87 is amended by redesignating paragraphs (b)(5) through (6) as (b)(6) through (7), paragraph (b)(3) as (b)(5), adding a new paragraph (b)(3), and revising paragraphs (b)(1) through (2) and (b)(4) to read as follows:

§ 87.87 Classification of operator licenses and endorsements.

* * * * *

(b) * * *

(1) T–1. First Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new First Class Radiotelegraph Operator's Certificates will be accepted for filing.

(2) T–2. Second Class Radiotelegraph Operator's Certificate. Beginning May 20, 2013, no applications for new Second Class Radiotelegraph Operator's Certificates will be accepted for filing.

(3) T–3. Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate). Beginning May 20, 2013, no applications for new Third Class Radiotelegraph Operator's Certificates will be accepted for filing.

(4) T. Radiotelegraph Operator License.

* * * * *

[FR Doc. 2013–02372 Filed 4–17–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. NHTSA–2013–0048]

RIN 2127–AL44

Organization and Delegation of Duties

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

ACTION: Final rule.

SUMMARY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT) is updating its regulations. These regulations govern the organization of the National Highway Traffic Safety Administration and delegations of authority from the Administrator to Agency officers including the Deputy Administrator, Chief Counsel, and Senior Associate Administrators. This rule is a publication of delegations made by the Administrator to other Agency officials.

DATES: This rule is effective April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Sade, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule updates the Code of Federal Regulations (CFR) sections that set forth the organization of the National Highway Traffic Safety Administration (NHTSA) and delegations of authority from the NHTSA Administrator to other Departmental officials including the Deputy Administrator, Chief Counsel, and Senior Associate Administrators. The purpose of this rule is to provide a road map to the public and government officials regarding how NHTSA operates, which office is responsible for which tasks, and the authority pursuant to which Agency offices act.

The regulations set forth in 49 CFR Part 501 are outdated and do not accurately reflect how NHTSA operates. For example, Part 501 still references an Executive Director, a position that no longer exists within the Agency. These and other inaccuracies in Part 501 create unnecessary confusion.

This rule amends Part 501 in three ways. First, it removes positions that are outdated and no longer exist within the Agency. Second, it updates the Administrator's delegations to reflect new statutory responsibilities and organizational changes within the Agency. Third, it clarifies the text and updates citations in Part 501 to increase transparency, accessibility, and readability.

This final rule does not impose substantive requirements. It simply updates the CFR to represent the current statutory and organizational posture of the Agency. The final rule is ministerial in nature and relates only to Agency management, organization, procedure, and practice. Therefore, the Agency has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). As these changes will not have a substantive impact on the public, the Agency does not expect to receive significant comments on the substance of the rule. Therefore, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

II. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). It was not reviewed by the Office of Management and Budget. There are no costs associated with this rule.

Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule would impose any costs on small entities as it makes non-substantive corrections. Therefore, I certify this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 501

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, NHTSA revises Title 49, Part 501 of the Code of Regulations to read as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Sec.

Authority: 49 U.S.C. 105 and 322, and delegations of authority at 49 CFR 1.95.

§ 501.1 Purpose.

This part describes the organization of the National Highway Traffic Safety Administration (NHTSA) through the Deputy Administrator, Chief Counsel, Senior Associate Administrator, Associate Administrator, Regional Administrator and Staff Office Director levels and provides for the performance of duties imposed on, and the exercise of powers vested in, the Administrator of the NHTSA (hereafter referred to as the ''Administrator'').

§ 501.2 General.

The Administrator is delegated authority by the Secretary of Transportation (49 CFR 1.95) to:

(a) Carry out the following chapters or sections of Title 49 of the United States Code:

(1) Chapter 301—Motor Vehicle Safety.

(2) Chapter 303—National Driver Register.

(3) Chapter 321—General.

(4) Chapter 323—Consumer Information.

(5) Chapter 325—Bumper Standards.

(6) Chapter 327—Odometers.

(7) Chapter 329—Automobile Fuel Economy.

(8) Chapter 331—Theft Prevention.

(9) Section 20134(a), with respect to the laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(b) Carry out 23 U.S.C. chapter 4, Highway Safety, as amended, except for section 409.

(c) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)).

(d) Carry out the provisions of 23 U.S.C. 313, Buy America.

(e) Administer the following sections of Title 23, United States Code, in coordination with the Federal Highway Administrator as appropriate:

(1) Section 153.

(2) Section 154.

(3) Section 158.

(4) Section 161.

(5) Section 163.

(6) Section 164.

(f) Carry out the consultation functions vested in the Secretary by Executive Order 11912 (3 CFR, 1976 Comp., p. 114), as amended, relating to automobiles.

§ 501.3 Organization and general responsibilities.

The National Highway Traffic Safety Administration consists of a headquarters organization located in Washington, DC, and a unified field organization consisting of ten geographic regions. The organization of, and general spheres of responsibility within, the NHTSA are as follows:

(a) *Office of the Administrator*—

(1) *Administrator.*

(i) Represents the Department and is the principal advisor to the Secretary in all matters related to chapters 301, 303, 321, 323, 325, 327, 329 and 331 of Title 49 U.S.C.; 23 U.S.C. chapter 4, except section 409; as each relates to highway safety, sections 153, 154, 158, 161, 163, 164 and 313 of Title 23 U.S.C.; and such other authorities as are delegated by the Secretary of Transportation (49 CFR sections 1.94 and 1.95);

(ii) Establishes NHTSA program policies, objectives, and priorities and directs development of action plans to accomplish the NHTSA mission;

(iii) Directs, controls, and evaluates the organization, program activities, performance of NHTSA staff, program and field offices;

(iv) Approves broad legislative, budgetary, fiscal and program proposals and plans; and

(v) Takes management actions of major significance, such as those relating to changes in basic organization pattern, appointment of key personnel, allocation of resources, and matters of special political or public interest or sensitivity.

(2) *Deputy Administrator.* Assists the Administrator in discharging responsibilities. Directs and coordinates the Administration's management and operational programs, and related policies and procedures at headquarters and in the field.

(3) [Reserved]

(4) *Director, Executive Correspondence.* Provides a central facilitative staff that administers an executive correspondence program and maintains policy files for the Administrator and Deputy Administrator, and services and support to committees as designated by the Administrator.

(5) *Director, Office of Civil Rights.* As principal staff advisor to the Administrator and Deputy Administrator on all matters pertaining to civil rights, acts as Director of Equal Employment Opportunity, Contracts Compliance Officer and Title VI (Civil Rights Act of 1964) Coordinator; assures Administration-wide compliance with related laws, Executive Orders, regulations and policies; and provides assistance to the Office of the Secretary in investigating and adjudicating formal complaints of discrimination.

(6) *Director, Governmental Affairs, Policy & Strategic Planning.* As the principal advisor to the Administrator and Deputy Administrator on all intergovernmental matters, including communications with Congress, communicates agency policy and coordinates with the Senior Associate Administrators and Chief Counsel on legislative issues affecting the agency. Also, coordinates Agency policy discussions and activities and coordinates with other operating administrations and the Office of Secretary on strategic planning efforts.

(b) *Chief Counsel.* As chief legal officer, provides legal services for the Administrator and the Administration;

prepares litigation for the Administration; effects rulemaking actions; issues subpoenas; and serves as coordinator on legislative affairs.

(c) *Senior Associate Administrators*—

(1) *Senior Associate Administrator for Policy and Operations.* As the principal advisor to the Administrator and Deputy Administrator with regard to core administrative and support services, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Planning, Administrative and Financial Management, the Chief Information Officer, the Director of Human Resources, the Director of Executive Correspondence, the Associate Administrator for Communications and Consumer Information, and the Emergency Coordinator.

(2) *Senior Associate Administrator for Vehicle Safety.* As the principal advisor to the Administrator and Deputy Administrator with regard to rulemaking, enforcement, vehicle safety research and statistics and data analysis, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Rulemaking, the Associate Administrator for Enforcement, the Associate Administrator for the National Center for Statistics and Analysis, and the Associate Administrator for Vehicle Safety Research.

(3) *Senior Associate Administrator for Traffic Injury Control.* As the principal advisor to the Administrator and Deputy Administrator with regard to programs to reduce traffic injury, provides direction and internal management and mission support for such activities. Provides executive direction over the Associate Administrator for Research and Program Development and the Associate Administrator for Regional Operations and Program Delivery.

§ 501.4 Succession to Administrator.

(a) The Deputy Administrator is the ''first assistant'' to the Administrator for purposes of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d), and shall, in the event the Administrator dies, resigns, or is otherwise unable to perform the functions and duties of the office, serve as the Acting Administrator, subject to the limitations in the Federal Vacancies Reform Act of 1998.

(b) In the event of the absence or disability of both the Administrator and the Deputy Administrator, or in the event that both positions are vacant, the following officials, in the order indicated, shall serve as Acting Deputy Administrator and shall perform the functions and duties of the Administrator, except for any non-delegable statutory and/or regulatory functions and duties:

(1) Chief Counsel;

(2) Senior Associate Administrator for Vehicle Safety;

(3) Senior Associate Administrator for Traffic Injury Control;

(4) Senior Associate Administrator for Policy and Operations.

(c) In order to qualify for the line of succession, officials must be encumbered in their position on a permanent basis.

§ 501.5 Exercise of authority.

(a) All authorities lawfully vested in the Administrator and reserved to him/her in this Regulation or in other NHTSA directives may be exercised by the Deputy Administrator and, in the absence of both Officials, by the Chief Counsel, unless specifically prohibited.

(b) In exercising the powers and performing the duties delegated by this part, officers of the NHTSA and their delegates are governed by applicable laws, executive orders, regulations, and other directives, and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary of Transportation, the Administrator, the Deputy Administrator and the Chief Counsel or, with respect to matters under their jurisdiction, by or on behalf of the Senior Associate Administrators, Associate Administrators, Regional Administrators, and Directors of Staff Offices.

(c) Each officer to whom authority is delegated by this part may redelegate and authorize successive redelegations of that authority subject to any conditions the officer prescribes. Redelegations of authority shall be in written form and shall be published in the **Federal Register** when they affect the public.

(d) Each officer to whom authority is delegated will administer and perform the functions described in the officer's respective functional statements.

§ 501.6 Secretary's reservations of authority.

The authorities reserved to the Secretary of Transportation are set forth in § 1.21 of Part 1 and in Part 95 of the regulations of the Office of the Secretary of Transportation in subtitle A of this Title (49 CFR Parts 1 and 95).

§ 501.7 Administrator's reservations of authority.

The delegations of authority in this part do not extend to the following authority which is reserved to the Administrator, except when exercised pursuant to §§ 501.4 and 501.5(a):

(a) The authority under chapter 301—Motor Vehicle Safety—of Title 49 of the United States Code to:

(1) Issue, amend, or revoke final federal motor vehicle safety standards and regulations;

(2) Make final decisions concerning alleged safety-related defects and noncompliances with Federal motor vehicle safety standards;

(3) Grant or renew temporary exemptions from federal motor vehicle safety standards; and

(4) Grant or deny appeals from determinations upon petitions for inconsequential defect or noncompliance.

(b) The authority under 23 U.S.C. chapter 4, as amended, to:

(1) Apportion authorization amounts and distribute obligation limitations for State highway safety programs under 23 U.S.C. 402;

(2) Award grants to the States under the National Priority Safety Programs, 23 U.S.C. 405;

(3) Issue, amend, or revoke uniform State highway safety guidelines and rules identifying highly effective highway safety programs under 23 U.S.C. 402;

(4) Fix the rate of compensation for non-government members of agency sponsored committees which are entitled to compensation.

(c) The authority under chapters 303, 321, 323, 325, and 329 (except section 32916(b)) of Title 49 of the United States Code to:

(1) Issue, amend, or revoke final rules and regulations; and

(2) Assess civil penalties and approve manufacturer fuel economy credit plans under chapter 329.

§ 501.8 Delegations.

(a) *Deputy Administrator.* The Deputy Administrator is delegated authority to act for the Administrator, except where specifically limited by law, order, regulation, or instructions of the Administrator. The Deputy Administrator is delegated authority to assist the Administrator in providing executive direction to all organizational elements of NHTSA.

(b) [Reserved]

(c) *Director, Office of Civil Rights.* The Director, Office of Civil Rights is delegated authority to:

(1) Act as the NHTSA Director of Equal Employment Opportunity.

(2) Act as NHTSA coordinator for matters under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Executive Order 12250 (3 CFR, 1980 Comp., p. 298), and regulations of the Department of Justice.

(d) *Chief Counsel.* The Chief Counsel is delegated authority to:

(1) Exercise the powers and perform the duties of the Administrator with respect to setting of odometer regulations authorized under 49 U.S.C. chapter 327, and with respect to providing technical assistance and granting extensions of time to the states under 49 U.S.C. 32705.

(2) Establish the legal sufficiency of all investigations and enforcement actions conducted under the authority of the following chapters, including notes, of Title 49 of the United States Code Chapters 301, 303, 321, 323, 325, 327, 329 and 331; to make an initial penalty demand based on a violations of any of these chapters; and to compromise any civil penalty or monetary settlement in an amount of $100,000 or less resulting from a violation of any of these chapters.

(3) Exercise the powers of the Administrator under 49 U.S.C. 30166(c), (g), (h), (i), and (k).

(4) Issue subpoenas, after notice to the Administrator, for the attendance of witnesses and production of documents pursuant to chapters 301, 321, 323, 325, 327, 329 and 331 of Title 49 of the United States Code.

(5) Issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.

(e) *Senior Associate Administrator for Policy and Operations.* The Senior Associate Administrator for Policy and Operations is delegated authority for executive direction of the Associate Administrator for Planning, Administrative and Financial Management; the Chief Information Officer; the Director of Human Resources; the Director of Executive Correspondence; the Associate Administrator for Communications and Consumer Information; and the Emergency Coordinator. To carry out this direction, the Senior Associate Administrator for Policy and Operations is delegated authority, except for authority reserved to the Administrator, to direct the NHTSA planning and evaluation system in conjunction with Departmental requirements and planning goals and to coordinate the development of the Administrator's plans, budgets, and programs, and analyses of their expected impact. The Senior Associate Administrator for Policy and Operations is also delegated authority to exercise procurement authority with respect to NHTSA requirements; administer and conduct NHTSA's personnel management activities; administer NHTSA financial management programs, including systems of funds control and accounts of all financial transactions; and conduct administrative management services in support of NHTSA missions and programs.

(f) *Senior Associate Administrator for Vehicle Safety.* The Senior Associate Administrator for Vehicle Safety is delegated authority for executive direction of the Associate Administrator for Rulemaking, the Associate Administrator for Enforcement, the Associate Administrator for the National Center for Statistics and Analysis, and the Associate Administrator for Vehicle Safety Research. The Senior Associate Administrator for Vehicle Safety exercises executive direction with respect to the setting of standards and regulations for motor vehicle safety, fuel economy, theft prevention, consumer information, and odometer fraud. To carry out this direction, the Senior Associate Administrator for Vehicle Safety is delegated authority, except for authority reserved to the Administrator or the Chief Counsel, to exercise the powers and perform the duties of the Administrator with respect to the setting of motor vehicle safety and theft prevention standards, fuel economy standards, procedural regulations, the National Driver Register, and the development of consumer information and odometer fraud regulations authorized under Chapters 301, 303, 321, 323, 325, 327, 329, and 331 of title 49, United States Code. The Senior Associate Administrator for Vehicle Safety is delegated authority to develop and conduct research and development programs and projects necessary to support the purposes of Chapters 301, 323, 325, 327, 329, and 331 of title 49, United States Code, and Chapter 4 of title 23, United States Code, as amended, in coordination with the appropriate Associate Administrators, and the Chief Counsel. The Senior Associate Administrator for Vehicle Safety is also delegated authority to respond to a manufacturer's petition for exemption from 49 U.S.C. Chapter 301's notification and remedy requirements in connection with a defect or noncompliance concerning labeling errors; extend comment periods (both self-initiated and in response to a petition for extension of time) for noncontroversial rulemakings; make technical amendments or corrections to a final rule; extend the effective date of a noncontroversial final rule; administer the NHTSA enforcement program for all laws, standards, and regulations pertinent to vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud, authorized under Chapters 301, 323, 325, 327, 329, and 331 of title 49, United States Code; issue regulations relating to the importation of motor vehicles under sections 30141 through 30147 of title 49, United States Code; and grant and deny petitions for import eligibility determinations submitted to NHTSA by motor vehicle manufacturers and registered importers under 49 U.S.C. 30141.

(g) *Senior Associate Administrator for Traffic Injury Control.* The Senior Associate Administrator for Traffic Injury Control is delegated authority for executive direction of the Associate Administrator for Research and Program Development and the Associate Administrator for Regional Operations and Program Delivery. To carry out this direction, the Senior Associate Administrator for Traffic Injury Control is delegated authority, except for authority reserved to the Administrator, over programs with respect to: Chapter 4 of title 23, United States Code, as amended; the authority vested by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)); the authority vested by 49 U.S.C. 20134(a), with respect to the laws administered by the Administrator pertaining to highway, traffic, and motor vehicle safety; and the authority vested by sections 153, 154, 158, 161, 163, and 164 of title 23, United States Code, in coordination with the Federal Highway Administrator as appropriate. The Senior Associate Administrator for Traffic Injury Control is also delegated authority to exercise the powers and perform the duties of the Administrator with respect to State highway safety programs under 23 U.S.C. 402 and National Priority Safety Programs under 23 U.S.C. 405, including approval and disapproval of State highway safety plans and vouchers, in accordance with the procedural requirements of the Administration.

Issued in Washington, DC on: April 10, 2013. under authority delegated in 49 CFR 1.95

David L. Strickland,

Administrator.

[FR Doc. 2013–09122 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 78, No. 75

Thursday, April 18, 2013

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

FEDERAL RESERVE SYSTEM

12 CFR Part 246

[Regulation TT; Docket No. R–1457]

RIN 7100–AD–95

Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting comments on a proposed rule to implement section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directs the Board to collect assessments, fees, or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board for bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more and nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (Council).

DATES: Comments should be received by June 15, 2013.

ADDRESSES: You may submit comments, identified by Docket No. 1457 and RIN 7100–AD–95, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Mark Greiner (202–452–5290), Nancy Perkins (202–973–5006), or William Spaniel (202–452–3469), Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel (202–452–2272) or Michelle Moss Kidd, Attorney (202–736–5554), Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Users of Telecommunication Device for the Deaf (TTD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Overview of Proposed Rule

Section 318 of the Dodd-Frank Act directs the Board to collect assessments, fees, or other charges (assessments) from bank holding companies and savings and loan holding companies with $50 billion or more in total consolidated assets, and nonbank financial companies designated by the Council pursuant to section 113 of the Dodd-Frank Act for supervision by the Board [1] (collectively, assessed companies) equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies. This proposed rule outlines the Board's assessment program, including how the Board would: (a) Determine which companies would be subject to an assessment for each calendar-year assessment period, (b) estimate the total expenses that are necessary or appropriate to carry out the supervisory and regulatory responsibilities to be covered by the assessment, (c) determine the assessment for each of these companies, and (d) bill for and collect the assessment from these companies.

Under the proposal, each calendar year would be an assessment period. Companies would be covered by this rule if the total consolidated assets for the company meets or exceeds $50 billion or the company has been designated for Board supervision by the Council during the assessment period. The Board proposes to notify those companies of the amount of their assessment no later than July 15 of the year following each assessment period. After an opportunity for appeal, assessed companies would be required to pay their assessments by September 30 of the year following the assessment period. The Board is proposing to collect assessments beginning with the 2012 assessment period. The Board believes that initiating the assessment program with the 2012 assessment period is appropriate as the Board has completed the development of a framework for the estimation of appropriate expenses and the collection of assessments. Additionally, the 2012 assessment period would be the first full calendar-year assessment period subsequent to the effective date of section 318 of Dodd-Frank.

The Board is inviting comments on all aspects of this proposed rulemaking.

[1] To date, the Council has not designated any nonbank financial company for Board supervision under section 113 of the Dodd-Frank Act.

II. Description of the Proposal

A. Key Definitions

1. Assessed Companies

The Board would make the determination for each calendar-year period (the assessment period) that a company is a bank holding company or savings and loan holding company with total consolidated assets equal to or exceeding $50 billion, or a nonbank financial company designated for Board supervision by the Council, based on information reported by the company on regulatory or other reports as determined by the Board.[2] In general, for each assessment period, the proposal would identify assessed companies as:

- A company that, on December 31 of the assessment period, is a top-tier bank holding company, other than a foreign bank holding company, as defined in section 2 of the Bank Holding Company Act,[3] that has total consolidated assets of $50 billion or more as determined based on the average of the bank holding company's total consolidated assets reported for the assessment period on its Schedule HC—Consolidated Balance Sheet of the bank holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) forms;
- A company that, on December 31 of the assessment period, is a top-tier savings and loan holding company, other than a foreign savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act,[4] that has total consolidated assets of $50 billion or more as determined based on the average of the savings and loan holding company's total consolidated assets reported for the assessment period on the savings and loan holding company's FR Y–9C forms, or in column B (consolidated) of the savings and loan holding company's Quarterly Savings and Loan Holding Company Report (FR 2320) forms, as applicable;[5]
- A foreign company that, on December 31 of the assessment period, is a top-tier bank holding company that has total consolidated assets of $50 billion or more as determined based on the average of the foreign banking organization's total consolidated assets reported for the assessment period on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q) submissions;[6]
- A foreign company that, on December 31 of the assessment period, is a savings and loan holding company that has total consolidated assets of $50 billion or more as determined based on the average of the foreign savings and loan holding company's total consolidated assets reported for the assessment period on regulatory reporting forms required for the foreign savings and loan holding company;[7] and
- A company that is a nonbank financial company designated for supervision by the Board under section 113 of the Dodd-Frank Act on December 31 of the assessment period.

Relying on the average assets reported in the financial reports submitted over the entire yearly assessment period, where available, would reduce volatility in an assessed company's assets over the year and avoid overreliance on any particular quarter.[8]

Question 1: What alternative decision criteria or procedures should the Board consider for determining whether a company is an assessed company, such as considering a greater or lesser number of regulatory reports, and why?

2. Total Assessable Assets

The term ''total assessable assets'' means the amount of assets that will be used to calculate an assessed company's assessment. In order to collect assessments that reflect the Board's role as the consolidated supervisor of assessed companies, further described in Section A.4, total assessable assets would include total assets for all activities subject to the Board's supervisory authority as the consolidated supervisor. For a U.S.-domiciled assessed company, total assessable assets would be the company's total consolidated assets of its entire worldwide operations, determined by using an average of the total consolidated asset amounts reported in applicable regulatory reports for the assessment period.[9] For a nonbank financial company supervised by the Board, total assessable assets would be the average of the nonbank financial company's total consolidated assets as reported during the assessment period on such regulatory or other reports as determined by the Board.[10] Similarly, at such time as any foreign savings and loan holding company becomes an assessed company, total assessable assets would be the average of the foreign savings and loan holding company's total combined assets of U.S. operations as reported during the assessment period on such regulatory reports as are applicable to the foreign savings and loan holding company.[11]

For a foreign bank holding company, total assessable assets would be equal to the company's total combined assets of U.S. operations,[12] including U.S. branches and agencies, as the Board has supervisory and regulatory responsibilities for the company's U.S. activities. Foreign bank holding companies do not currently submit a

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[2] All organizational structure and financial information that the Board would use for the purpose of determining whether a company is an assessed company, including information with respect to whether a company has control over a U.S. bank or savings association, must have been received by the Board on or before June 30 following that assessment period and must reflect events that were effective on or before December 31 of the assessment period.

[3] 12 U.S.C. 1841(a).

[4] 12 U.S.C. 1467.

[5] Generally, for multi-tiered bank holding companies and multi-tiered savings and loan holding companies in which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company would be the top-tier, regulated holding company. If a U.S.-domiciled company does not report total consolidated assets in its public reports or uses a financial reporting methodology other than U.S. GAAP, the Board may use, at its discretion, any comparable financial information that the Board may require from the company for this determination. In situations where two or more unaffiliated companies control the same U.S. bank or savings association and each company has average total consolidated assets of $50 billion or more, each of the unaffiliated companies would be designated an assessed company. Generally, a company has control over a bank, savings association, or company if the company has (a) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank, savings association, or company, directly or indirectly or acting through one or more other persons; (b) control in any manner over the election of a majority of the directors or trustees of the bank, savings association, or company; or (c) the Board determines the company exercises, directly or indirectly, a controlling influence over the management or policies of the bank, savings association, or company. *See* 12 U.S.C. 1841(a)(2) (bank holding companies) and 12 U.S.C. 1467a(a)(2) (savings and loan holding companies).

[6] For annual filers of the FR Y–7Q, the total consolidated assets would be determined from the foreign banking organization's FR Y–7Q annual submission for the calendar year of the assessment period.

[7] At present, there are no foreign savings and loan holding companies.

[8] A four-quarter average of a company's total consolidated assets also has been proposed for the definition of a covered company in the notice of proposed rulemaking for ''Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies'' published in the **Federal Register** 77 FR 594 (January 5, 2012). If an assessed company has not reported its total consolidated assets to the Board pursuant to one of the reporting forms named above, the Board may also use, at its discretion, other financial or annual reports filed by the company to determine a company's total consolidated assets. For example, the Board may use the Savings Association Holding Company Report (FR H–(b)11), or any filing filed with the Securities and Exchange Commission (SEC).

[9] For assessed companies that are grandfathered unitary savings and loan holding companies, the Board would only include assets associated with its savings association subsidiary and its other financial activities.

[10] If the nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act is a foreign company, its assessable assets would be the average of the foreign nonbank financial company's U.S. assets as reported during the assessment period. As the Council begins to designate nonbank financial companies under section 113, the Board's methodology for determining the assessments for these companies would be reviewed and, as needed, revised.

[11] If any foreign savings and loan holding company becomes an assessed company, the Board's methodology for determining the assessments for these companies would be reviewed and, as needed, revised.

[12] A foreign bank holding company's total assessable assets would not include the assets of section 2(h)(2) companies as defined in section 2(h)2 of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

single regulatory reporting form that reports the total combined assets of their U.S. operations for which the Board has supervisory and regulatory authority.[13] In order to determine a foreign bank holding company's total assessable assets for the 2012 and 2013 assessment periods, a foreign bank holding company's total assessable assets would be the average of the total combined assets of U.S. operations, net of U.S. intercompany balances and transactions (as allowed [14]), from the stand alone regulatory reporting form for, specifically: [15]

- A top-tier, U.S.-domiciled bank holding company or U.S.-domiciled savings and loan holding company; [16]
- U.S. branches and agencies; [17]
- U.S.-domiciled nonbank subsidiaries; [18]
- Edge Act and Agreement Corporations; [19] U.S. banks and U.S. savings associations; [20] and broker-dealers that are not reflected in the assets of a U.S. domiciled parent's regulatory reporting form submission.[21]

For assessment periods after 2013, the Board proposes to modify the FR Y–7Q by adding a line item for reporting the total combined assets of a foreign banking organization's U.S. operations, consistent with the Board's supervisory and regulatory authority over foreign banking organizations' U.S. operations.

Question 2: What, if any, challenges does the proposed approach present for determining the total assessable assets of an assessed company, foreign or domestic?

Question 3: What, if any, specific concerns arise for assessed companies that are primarily non-depository firms, and what method of determining total assessable assets should be considered for those companies and why?

3. Assessment Periods

Under the proposed rule, each calendar year would be an assessment period. For each assessment period, the Board would make a determination as to whether an entity is an assessed company for that assessment period. The Board anticipates that the population of assessed companies will be relatively stable, and it is likely that an entity that is an assessed company during one assessment period will be an assessed company for following assessment periods. Nevertheless, some entities with average total consolidated assets near the $50 billion threshold might be included in one assessment period and not in another.

The Board would determine which companies, as of December 31 of the prior calendar year, (i) were of the types of entities enumerated in the rule (i.e., a bank holding company, savings and loan holding company, or designated nonbank financial company subject to Board supervision) and (ii) had average total consolidated assets equal to or exceeding the $50 billion threshold, as reported on the relevant reporting form(s) or based on other information as the Board may consider. The Board would notify each company that it is an assessed company by July 15 of each calendar year following the assessment period.

Question 4: What, if any, burdens are created for assessed companies by the Board's use of December 31 as the "as of" date for determining assessed companies and notifying assessed companies on July 15 of the following year? What alternative dates or methodologies should the Board consider and why?

Question 5: For companies near $50 billion in total consolidated assets, what, if any, concerns are associated with not being certain whether the company would be an assessed company from one assessment period to another and what alternatives might mitigate those concerns?

4. Assessment Basis

The assessment basis means the applicable estimated expenses [22] of the Board and the Reserve Banks (to which the Board has delegated supervisory responsibility) as consolidated supervisor of assessed companies. The assessment basis would include necessary or appropriate expenses associated with consolidated regulation and supervision of all assessed companies. In order to determine the assessment basis, the Board would estimate its aggregate expenses for activities related to the supervision and regulation of the entire population of assessed companies. These expenses include, but are not limited to: conducting onsite and offsite examinations, inspections, visitations and reviews; providing ongoing supervision; meeting and corresponding regarding supervision matters; conducting stress tests; assessing resolution plans; developing, administering, interpreting and

[13] Currently, foreign bank holding companies, as foreign banking organizations, report total consolidated assets of worldwide operations on the FR Y–7Q, which the proposal would use for determining whether a foreign bank holding company is an assessed company.

[14] Net intercompany balances and transactions between a U.S. entity and a foreign affiliate would not be eliminated, as such balances and transactions would not result in double counting of assets on a U.S.-combined basis. If any standalone regulatory reporting form does not itemize intercompany balances and transactions between U.S.-domiciled affiliates, branches or agencies, this proposal would not eliminate intercompany balances and transactions reported on that form from the calculation of total assessable assets. For regulatory reporting forms that do not distinguish between (i) balances and transactions between U.S. affiliates, and (ii) balances and transactions between a U.S affiliate and a foreign affiliate, the Board would not eliminate any such balances or transactions between affiliates reported on the form because it would be impossible to distinguish between assets that would result in double counting and assets that would not result in double counting.

[15] The proposed approach would exclude from the sum the assets of entities for which a stand-alone regulatory report has been filed, but whose assets are reflected in the consolidated balance sheet of a U.S.-domiciled higher-tier regulatory reporting form filer.

[16] Total assets for each U.S.-domiciled, top-tier bank holding company or savings and loan holding company would be the company's total assets as reported on line item 12, Schedule HC of the FR Y–9C, or as reported on line item 1, column B, of the FR 2320, as applicable.

[17] Total assets for each branch or agency would be calculated as total claims of nonrelated parties (line item 1.i from column A on Schedule RAL) plus due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, part 1 on Schedule M), as reported on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). Note that due from head office of parent bank (line item 2.a, column A, part 1 on Schedule M) would be included net of due to head office of parent bank (line item 2.a, column B, part 1 on Schedule M) when there is a net due from position reported for line item 2.a. A net due to position for line item 2.a would result in no addition to total assets with respect to line item 2.a, part 1 on Schedule M.

[18] For quarterly Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–N) filers, total assets for each nonbank subsidiary would be calculated as total assets (line item 10, Schedule BS), minus balances due from related institutions located in the United States, gross (line item 4.a of Schedule BS–M) of the FR Y–7N. For annual Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–NS) filers, total assets for each nonbank subsidiary would be as reported on line item 2 of the FR Y–7NS. Until foreign assessed companies report on the revised form FR Y–7Q described in this proposal, the Board would only include the assets of affiliates for which the foreign assessed company is the majority owner, as the Board would not have sufficient information to accurately account for non-majority-owned affiliates.

[19] Total assets for each Edge Act or agreement corporation would be the sum of claims on nonrelated organizations (line item 9, "consolidated total" column on Schedule RC of the Consolidated Report of Condition and Income for Edge Act and agreement corporations (FR 2886b)), and claims on related organizations domiciled outside the United States (line items 2.a and 2.b, column A on Schedule RC–M), as reported on FR 2886b.

[20] Total assets for each bank or savings association that is not a subsidiary of a U.S.-domiciled bank holding company or savings and loan holding company would be the bank's or savings association's total assets as reported on line item 12, Schedule RC of the Balance Sheet of the Consolidated Reports of Condition and Income (FFIEC 031 or FFIEC 041, as applicable).

[21] Total assets for each broker-dealer would be the broker-dealer's total assets as reported on the statement of financial condition of the SEC's FOCUS Report, Part II (Form X–17A–5), FOCUS Report, Part IIa (Form X–17A–5), or FOCUS Report, Part II CSE (Form X–17A–5).

[22] Expenses include all direct operating expenses, including support, overhead, and pension expenses.

explaining regulations, laws, and supervisory guidance adopted by the Board; engaging in enforcement actions; processing and analyzing applications and notices, including conducting competitive analyses and financial stability analyses of proposed bank and bank holding company mergers, acquisitions, and other similar transactions; processing consumer complaints; and implementing a macro-prudential supervisory approach.[23] In addition, the estimated expenses for the assessment basis would include a share of expenses associated with activities that are integral to carry out the supervisory and regulatory responsibilities of the Board, even when those expenses are not directly attributable to specific companies.[24] For those activities, the Board would calculate the relative proportion of expenses that are attributable to assessed companies divided by expenses for those activities that are attributable to all companies and entities supervised by the Board, and apply that proportion to the shared expenses.

For each assessment period, the Board's assessment basis would be the Board's estimate of the total expenses necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to the population of assessed companies, based on an average of estimated expenses over the current and prior two assessment periods. For the 2012 assessment period, the Board estimates that the assessment basis would be approximately $440 million. Thereafter, to mitigate volatility in assessments and provide a more stable basis from year to year, the Board would calculate a three-year average of its estimated expenses, and would determine assessments for each year based on that three-year average. Thus, as an example, the assessment basis for 2015 would be the average of the Board's estimated expenses relating to assessed companies from calendar years 2013, 2014, and 2015. For the assessment bases for calendar years 2012, 2013, and 2014, the Board would use the estimate of its expenses for 2012, the first year for which it will collect assessments.[25] The Board expects to evaluate the volatility in assessment fees resulting from its methodology for determining the assessment basis on an ongoing basis and may refine its methodology as appropriate through the rulemaking process.

B. Apportioning the Assessment Basis to Assessed Companies

1. Apportionment Based On Size

In general, total expenses relating to the supervision of a company are a function of the size and associated complexity of the company. For example, for companies with assets of $50 billion or more, supervision typically consists of onsite teams with a continuous presence at the firm, offsite surveillance and monitoring, and a series of targeted onsite examinations conducted throughout the year that focus on individual areas of operations and risk. Larger companies are often more complex companies, with associated risks that play a large role in determining the supervisory resources needed for that company. The largest companies, because of their increased complexity, risk and geographic footprints, usually receive more supervisory attention. For example, a number of regulations in development to implement provisions of the Dodd-Frank Act are directed at financial institutions with total consolidated assets of $50 billion or more and nonbank companies designated for supervision by the Board, and some of these regulations are tailored further based on the size of a company.[26]

Apportioning the assessment basis based on the total consolidated asset size of the assessed companies is generally reflective of the amount of supervisory and regulatory expenses associated with a particular company, and generally is information that is well understood, objective, transparent, readily available, and comparable among all types of assessed companies. As a result, the Board proposes to determine assessments based on the assessed companies' total assessable assets for the assessment period.

Question 6: What, if any, alternatives to a total consolidated assets measure should the Board consider for apportioning the assessment basis among assessed companies and why?

2. Assessment Formula

The proposal would apportion the assessment basis among assessed companies by means of an assessment formula that uses the total assessable asset size of each assessed company. For each assessment period, the assessment formula applied to the assessed companies is proposed to be:

Assessment = $50,000 + (Assessed Company's Total Assessable Assets × Assessment Rate).

Each company's assessment would be computed using a base amount of $50,000 for each assessed company. The Board believes that including this base amount in each assessment is appropriate to ensure that the nominal expenses related to the Board's supervision and regulation of such companies, particularly for those companies that are near the $50 billion threshold, are covered. The ''assessment rate'' would be determined each assessment period according to this formula:

$$\textit{Assessment rate} = \frac{\textit{Assessment Basis} - (\textit{Number of Assessed Companies} \times 50{,}000)}{\textit{Total Assessable Assets of All Assessed Companies}}$$

[23] The Board's costs with respect to supervising state member banks and branches and agencies of foreign banking organizations are excluded from the assessment basis because such costs are not attributable to the Board's role as consolidated supervisor of the parent company. However, as such assets and the assets of the company's other depository institutions, nonbank subsidiaries, and other similar entities contribute to the costs incurred by the Board as the consolidated supervisor, such assets are therefore included in total assessable assets.

[24] These activities include (i) the Shared National Credit (SNC) Program, which the Board and the other federal banking agencies established in 1977 to promote the efficient and consistent review and classification of shared national credits; (ii) the training of staff in the supervision function; (iii) research, analysis, and development of supervisory and regulatory policies, procedures, and products of the Board; and (iv) collecting, receiving, and processing regulatory reports received from institutions supervised and regulated by the Board.

[25] As explained further in section B.2, the Board would also use the 2012 assessment rate to calculate each assessed company's assessment in 2013 and 2014.

[26] See, e.g., ''Capital Plans,'' final rule published in the **Federal Register** 76 FR 231 (Dec. 1, 2011), ''Credit Risk Retention,'' proposal published in the **Federal Register** 76 FR 83 (April 29, 2011), and ''Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies,'' proposal published in the **Federal Register** 77 FR 594 (January 5, 2012).

The assessment rate would be determined by dividing the assessment basis (minus the base amount that covers nominal expenses times the number of assessed companies) by the total assessable assets of all assessed companies to determine a ratio of Board expenses to total assets for each assessment period, and then multiplies an assessed company's total assessable assets by the resulting assessment rate. Thus, a company with higher total assessable assets would be charged a higher assessment than a company with lower total assessable assets, which generally reflects the greater supervisory and regulatory attention and associated workloads and expenses associated with larger companies. The assessment represents a cost to the assessed companies. This cost, however, as mandated by section 318 of the Dodd-Frank Act, is for the purpose of collecting the estimated expenses of supervising and regulating assessed companies.

Over the first three years of the program, the assessment rate would be fixed. After the Board determines the assessment rate for 2012, it would use that assessment rate for calculating the assessment for the following two assessment periods, ending with the assessments for 2014. Thereafter, for each assessment period, the Board would calculate an assessment rate by averaging the Board's relevant expenses for the past three years. Keeping the same assessment rate for the first three years and the subsequent three-year average would reduce year-to-year fluctuations in assessments.

Assessment Calculation Example

For purposes of illustration, using the methodologies set forth in this proposal and based on information as of the date of this notice of proposed rulemaking, the Board estimates that for 2012 there would be approximately 70 assessed companies with aggregate total assessable assets of about $20 trillion and that the assessment basis would be about $440 million. Using these figures, a company with total assessable assets of $50 billion [27] would be required to pay an assessment of approximately $1 million and a company with total assessable assets of $1 trillion would be required to pay an assessment of approximately $22 million.

Question 7: What alternatives should the Board consider for differentiating assessments among assessed companies (for example, a tiered fee structure), and why?

Question 8: What alternative approaches to the three-year average should the Board consider for reducing volatility in assessments for assessed companies, and why?

Question 9: Does the Board's proposal to use the same assessment rate for the first three years permit adequate preparation for assessed companies, and if not, what should the Board consider in initiating its assessments system?

C. Collection Procedures

1. Notice of Assessment and Appeal Procedure

Under the proposal, the Board would send a notice of assessment to each assessed company no later than July 15 of the year following the assessment period stating that the Board had determined the company to be an assessed company for the prior calendar year, stating the amount of the company's total assessable assets and the amount the assessed company must pay by September 30. The Board would also, no later than July 15, publish on its Web site the assessment formula for that assessment period. For the 2012 assessment period, the notice of assessment and the date on which the assessment is due may be adjusted depending on the date of the issuance of the final regulation.

Companies identified as assessed companies would have 30 calendar days from July 15 to appeal the Board's determination of the company as an assessed company or the Board's determination of the company's total assessable assets. Under the proposal, companies choosing to appeal must submit a request for redetermination in writing and include all the pertinent facts the company believes would be relevant for the Board to consider. Grounds for appeal would be limited to (i) whether the assessed company was not properly considered an assessed company (i.e., it is not a bank holding company, savings and loan holding company, or nonbank financial company designated by the Council as of December 31 of the assessment period), or (ii) review of the Board's determination of the assessed company's total assessable assets. The Board would consider the company's request and respond within 15 calendar days from the end of the appeal period with the results of its review of any properly filed appeal. A successful appeal would not change the assessment for any other company.

2. Collection of Assessments

Under the proposal, each assessed company would pay its assessments using the Fedwire Funds Service (Fedwire) to the Federal Reserve Bank of Richmond. The assessments will then be transferred to the U.S. Treasury's General Account. Assessments must be credited to the Board by September 30 of the year following the assessment period.[28] In the event that the Board does not receive the full amount of an assessed company's assessment by the payment date for any reason that is not attributable to an action of the Board, the assessment would be considered delinquent and the Board would charge interest on the delinquent assessment until the assessment and interest, calculated daily from the collection date and based on the U.S. Treasury Department's current value of funds rate percentage, is paid.

Question 10: What alternative approaches or additional factors should the Board consider for the billing and collection of assessments and why?

Revisions to the FR Y–7Q

The FR Y–7Q requires each top-tier foreign banking organization to file asset and capital information. Currently, Part 1 of the report requires the filing of capital and asset information for the top-tier foreign banking organization,[29] while Part 2 requires capital and asset information for lower-tier foreign banking organizations operating a branch or an agency, or owning an Edge Act or Agreement Corporation, a commercial lending company, or a commercial bank domiciled in the United States.[30] As explained in the reporting instructions for the FR Y–7Q, both Part 1 and Part 2 of the reporting form collect capital and asset information with respect to the foreign banking organization's worldwide operations. However, neither Part 1 or Part 2 collects capital and asset information with respect to only the

[27] Total assessable assets could be less than $50 billion for foreign companies with total consolidated worldwide assets of $50 billion or more, but total combined U.S. assets of less than $50 billion.

[28] As stated above, this date may be adjusted for the 2012 assessment period to accommodate the final rulemaking.

[29] This form is reported annually by each top-tier foreign banking organization if it or any foreign banking organization in its tiered structure has not elected to be a financial holding company, and is reported quarterly by each top-tier foreign banking organization if it or any foreign banking organization in its tiered structure has elected to be a financial holding company.

[30] Reported quarterly by each lower-tier foreign banking organization (where applicable) operating a branch or an agency, or owning an Edge Act or Agreement corporation, a commercial lending company, or a commercial bank domiciled in the United States, if it or any foreign banking organization in its tiered structure has financial holding company status.

foreign banking organization's U.S. operations.

For the purpose of determining a foreign assessed company's total assessable assets, the Board believes that combining the assets of the foreign assessed company's U.S. branches and agencies with the total assets of all U.S. domiciled affiliates reported on other regulatory reports on a standalone basis would likely not yield a result that is comparable to the consolidated approach required of U.S.-domiciled assessed companies, which report total consolidated assets on Schedule HC of FR Y–9C according to standard rules of consolidation. That is, not all standalone reports itemize separately the intercompany balances and transactions between only U.S. affiliates that would be netted out on a U.S. consolidated basis. Therefore, in order to improve parity among all assessed companies with respect to the determination of total assessable assets, the Board is proposing to revise Part 1 of the FR Y–7Q to collect the top-tier foreign banking organization's total combined assets of U.S. operations,[31] net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies.[32] The instructions for the amended FR Y–7Q will closely parallel, to all practicable extents, the instructions for the FR Y–9C for consolidating assets of U.S. operations, including for accounting for less-than-majority-owned affiliates.

In addition, the Board is proposing to revise Part 1 of the FR Y–7Q to collect information about certain foreign banking organizations more frequently. As mentioned above, only top-tier foreign banking organizations with financial holding company status file Part 1 of the FR Y–7Q quarterly, while a top-tier foreign banking organization would report annually if the foreign banking organization, or any foreign banking organization in its tiered structure, has not effectively elected to be a financial holding company. Accordingly, for purposes of determining whether a foreign banking organization is an assessed company and the amount of a foreign assessed company's total assessable assets more frequent than annually, the Board is proposing to revise the FR Y–7Q quarterly reporting requirements for Part 1 to include all top-tier foreign banking organizations, regardless of financial holding company designation, with total consolidated worldwide assets of $50 billion or more as reported on Part 1 of the FR Y–7Q. Once a foreign banking organization has total consolidated assets of $50 billion or more and begins to report quarterly, the foreign banking organization must continue to report Part 1 quarterly unless and until the foreign banking organization has reported total consolidated assets of less than $50 billion for each of all four quarters in a full calendar year. Thereafter, the foreign banking organization may revert to annual reporting, in accordance with the FR Y–7Q reporting form's instructions for annual reporting of Part 1. If at any time, after reverting to annual reporting, a foreign banking organization has total consolidated assets of $50 billion or more, the FBO must return to quarterly reporting of Part 1. Regardless of size, all top-tier foreign banking organizations that have elected to be financial holding companies at the foreign banking organization's top tier or tiered structure would continue to report quarterly.

Question 11: What changes, if any, should be made to the proposal to ensure consistency and accuracy of determining foreign bank holding company assets in a manner that is most comparable to U.S.-domiciled bank holding companies?

Question 12: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What, if any, alternative approaches should the Board consider? Responses should be detailed as to the nature and impact of these challenges and should address whether the Board should consider implementing additional transitional arrangements in the rule to address these challenges.

III. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the proposed rule easier to understand. For example:

- Is the material organized to suit your needs? If not, how could the Board present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by Office of Management and Budget (OMB). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in sections 246.3(e)(3) and 246.5(b).

1. Reporting Requirements in 246.3(e)(3)

Section 318 of the Dodd-Frank Act directs the Board to collect assessments, fees, or other charges, from assessed companies equal to the expenses the Board estimates would be necessary and appropriate to carry out its supervision and regulation of those companies. Section 318 describes these companies as (1) a bank holding company (BHC) (other than a foreign bank holding company) with total consolidated assets of $50 billion or more determined based on the average of the BHC's total consolidated assets reported during the assessment period on its Schedule HC—Consolidated Balance Sheet of the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128) forms; (2) a savings and loan holding company (SLHC) (other than a foreign savings and loan holding company) with total consolidated assets of $50 billion or more, (3) a foreign company that is a BHC or SLHC with $50 billion or more in total consolidated assets determined based on the average of the foreign company's total consolidated assets reported during the assessment period on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q; OMB No. 7100–0125) and (4) a nonbank financial company designated for supervision by the Board under section 113 of the Dodd-Frank Act. In

[31] For purposes of the amended FR Y–7Q, total combined assets would not include the assets of section 2(h)(2) companies as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

[32] For purposes of FR Y–7Q reporting, U.S.-domiciled affiliates would be defined as subsidiaries, associated companies, and entities treated as associated companies (e.g., corporate joint ventures) as defined in the FR Y–9C.

order to improve parity among all assessed companies with respect to the determination of total assessable assets, the Board proposes to revise Part 1 of the FR Y–7Q to collect a new data item from top-tier FBO's—Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies. In addition, the Board proposes to revise the reporting panel for Part 1 of the FR Y–7Q to collect information about certain FBOs more frequently (from annual reporting to quarterly reporting) for purposes of determining whether a FBO is an assessed company. All top-tier FBOs, regardless of financial holding company designation, with total consolidated worldwide assets of $50 billion or more as reported on Part 1 of the FR Y–7Q would be required to submit data quarterly. The Board estimates that 71 FBOs would initially be required to change from annual reporting to quarterly reporting.[33] The Board estimates that, upon implementation of the new data item, 109 FBOs would initially submit the FR Y–7Q on a quarterly basis. In addition, the Board estimates that 43 FBOs would initially submit the FR Y–7Q on an annual basis upon implementation of the new data item. The Board estimates that it would take, on average, 15 minutes per submission to report the new data item. The total annual reporting burden associated with the revisions to the FR Y–7Q is estimated to be 393 hours.

2. Reporting Requirements in 246.5(b)

Under section 246.5(b) upon the Federal Reserve issuing the notice of assessment to each assessed company, the company would have 30 calendar days to submit a written statement to appeal the Board's determination of the company as (i) a BHC, SLHC, foreign bank holding company, or nonbank financial company supervised by the Board; (ii) the Board's determination of the company's total consolidated assets, or (iii) the Board's determination of the company's total assessable assets, as set forth in 246.4(e) of this rule. This new collection would be titled the Dodd-Frank Act Assessment Fees Request for Redetermination (FR 4030; OMB No. 7100—to be assigned).

The Board estimates that 7 assessed companies would submit a written request for appeal annually. The Board estimates that these assessed companies would take, on average, 40 hours (one business week) to write and submit the written request. The total annual PRA burden for the new FR 4030 information collection is estimated to be 280 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551. Copies of such comments may also be submitted to the Office of Management and Budget, 725 17th St. NW., #10235 (Docket FRB Docket No. R–1457), Washington, DC 20503, Attn: Federal Reserve Desk Officer.

C. Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), the Board is publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period if the Board determines that the rule will have a significant economic impact on a substantial number of small entities.

1. *Statement of the objectives of the proposal.* As required by section 318 of the Dodd-Frank Act, the Board is proposing a rule to assess bank holding companies and savings and loan holding companies with assets of equal to or greater than $50 billion and nonbank financial companies supervised by the Board for the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

2. *Small entities affected by the proposal.* Under regulations issued by the Small Business Administration, a banking entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions; and $7 million or less in revenues for nonbank mortgage lenders.[34] The proposed rule, by definition, will affect bank holding companies and savings and loan holding companies with assets of equal to or greater than $50 billion. The proposed rule also will affect nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Act but it is unlikely that such an institution would be considered ''small'' by the Small Business Administration. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The Board's proposed rule is unlikely to impose any new recordkeeping, reporting, or compliance requirements. As stated above, a small banking entity is unlikely to be affected by the proposed rule. The Board seeks information and comment on any changes in recordkeeping, reporting, and compliance requirements arising from the application of the proposed rule to small entities.

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions of the proposed rule.

5. *Significant alternatives to the proposed revisions.* The Board believes that no alternatives to the proposed rule are available for consideration. The Board nevertheless welcomes comments on any significant alternatives, consistent with the requirements of the Dodd-Frank Act that would minimize the impact of the proposed rule on small entities.

List of Subjects in 12 CFR Part 246

Administrative practice and procedure, Assessments, Banks, Banking, Holding companies, Nonbank financial companies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR chapter II as follows:

■ 1. Add new Part 246 to read as follows:

[33] Once an FBO reports total consolidated assets of $50 billion or more and begins to report quarterly, the FBO must continue to report Part 1 quarterly unless and until the FBO has reported total consolidated assets of less than $50 billion for each of all four quarters in a full calendar year. Thereafter, the FBO may revert to annual reporting.

[34] 13 CFR 121.201.

PART 246—SUPERVISION AND REGULATION ASSESSMENTS OF FEES (REGULATION TT)

Authority: Pub. L. 111–203, 124 Stat. 1376, 1526, and section 11(s) of the Federal Reserve Act (12 U.S.C. 248(s)).

Part A—In General

§ 246.1 Authority, purpose and scope.

(a) *Authority.* This part (Regulation TT) is issued by the Board of Governors of the Federal Reserve System (Board) under section 318 of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–32, 12 U.S.C. 5365 and 5366) and section 11(s) of the Federal Reserve Act (12 U.S.C. 248(s)).

(b) *Scope.* This part applies to:

(1) Any bank holding company having total consolidated assets of $50 billion or more, as defined below;

(2) Any savings and loan holding company having total consolidated assets of $50 billion or more, as defined below; and

(3) Any nonbank financial company supervised by the Board, as defined below.

(c) *Purpose.* This part implements provisions of section 318 of the Dodd-Frank Act that direct the Board to collect assessments, fees, or other charges from companies identified in subsection (b) that are equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to these assessed companies.

§ 246.2 Definitions.

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. § 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. § 5321).

(d) *Foreign bank holding company* means a foreign bank or company that is a bank holding company.

(e) *Foreign savings and loan holding company* means a foreign bank or foreign company that is a savings and loan holding company.

(f) *Grandfathered unitary savings and loan holding company* means a savings and loan holding company described in section 10(c)(9)(C) of the Home Owners' Loan Act (''HOLA'') (12 U.S.C. § 1467a(c)(9)(C).

(g) *Notice of assessment* means the notice in which the Board informs a company that it is an assessed company and states the assessed company's total assessable assets and the amount of its assessment.

(h) *Savings and loan holding company* is defined as in section 10 of HOLA (12 U.S.C. § 1467a).

(i) *Savings association* means a savings association, as defined in 12 U.S.C. § 1813 of this title.

§ 246.3 Assessed Companies

(a) *Assessed companies.* An assessed company is any company that:

(1) is a top-tier company that, on December 31 of the assessment period:

(i) is a bank holding company, other than a foreign bank holding company, with $50 billion or more in total consolidated assets, as determined based on the average of the bank holding company's total consolidated assets reported for the assessment period on the Federal Reserve's Form FR Y–9C (''FR Y–9C''),

(ii) is a savings and loan holding company, other than a foreign savings and loan holding company, with $50 billion or more in total consolidated assets, as determined based on the average of the savings and loan holding company's total consolidated assets as reported for the assessment period on the FR Y–9C or on column B of the Quarterly Savings and Loan Holding Company Report (FR 2320), as applicable,

(2) is a top-tier foreign bank holding company on December 31 of the assessment period, with $50 billion or more in total consolidated assets, as determined based on the average of the foreign bank holding company's total consolidated assets reported for the assessment period on the Federal Reserve's Form FR Y–7Q (''FR Y–7Q''),

(3) is a top-tier foreign savings and loan holding company on December 31 of the assessment period, with $50 billion or more in total consolidated assets, as determined based on the average of the foreign savings and loan holding company's total consolidated assets reported for the assessment period on the reporting forms applicable during the assessment period, or

(4) the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. § 5323) to be supervised by the Board and for which such determination is in effect as of December 31 of the assessment period.

(b) *Assessment period* means January 1 through December 31 of each calendar year.

§ 246.4 Assessments.

(a) *Assessment.* Each assessed company shall pay to the Board an assessment for any assessment period for which the Board determines the company to be an assessed company.

(b) *Assessment formula.* The assessment will be calculated according to the Assessment Formula, as follows:

Column A		Column B		Column C		Column D
Base amount	+	(Total assessable assets	×	Assessment rate)	=	Assessment
$50,000	+	($B	×	C)	=	$D

The assessed company's assessment would be comprised of the base amount, plus the amount of the assessed company's total assessable assets in Column B times the assessment rate in Column C.

(c) *Assessment rate.* Assessment rate means, with regard to a given assessment period, the rate published by the Board for the calculation of assessments for that period.

(1) The assessment rate will be calculated according to this formula:

$$\textit{Assessment rate} = \frac{\textit{Assessment Basis} - (\textit{Number of Assessed Companies} \times 50{,}000)}{\textit{Total Assessable Assets of All Assessed Companies}}$$

(2) For the calculation set forth in (1), above, the number of assessed companies and the total assessable assets of all assessed companies will each be that of the relevant assessment period, provided, however, that for the assessment periods corresponding to 2012, 2013 and 2014, the Board shall use the number of assessed companies and the total assessable assets of the 2012 assessment period to calculate the assessment rate.

(d) *Assessment basis.* Assessment basis means:

(1) For the 2012, 2013, and 2014 assessment periods, the assessment basis is the amount of total expenses the Board estimates is necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to assessed companies for 2012.

(2) For the 2015 assessment period and for each assessment period thereafter, the assessment basis is the average of the amount of total expenses the Board estimates is necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to assessed companies for that assessment period and the two prior assessment periods.

(e) *Total assessable assets.* Total assessable assets are calculated in accordance with this section as follows:

(1) *Bank holding companies.* For any bank holding company, other than a foreign bank holding company, total assessable assets will be determined by the average of the bank holding company's total consolidated assets as reported for the assessment period on the bank holding company's FR Y–9C or such other reports as determined by the Board as applicable to the bank holding company,

(2) *Foreign bank holding companies and foreign savings and loan holding companies.*

(i) *In general.* For any foreign bank holding company or for any foreign savings and loan holding company, with the exception of the 2012 and 2013 assessment periods, this amount will be the average of the foreign bank holding company's or savings and loan holding company's total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies, as reported for the assessment period on the Part 1 of the FR Y–7Q or such other reports as determined by the Board as applicable to the foreign bank holding company or foreign savings and loan holding company,

(ii) *2012 and 2013 assessment periods.* For the 2012 and 2013 assessment periods, for any foreign bank holding company, total assessable assets will be the average of the sum of the respective line items reported quarterly, plus any line items reported annually for the assessment period on an applicable regulatory reporting form for the assessment period for all majority-owned U.S.-domiciled affiliates, branches and agencies of the foreign bank holding company, as set forth in this section:

(A) Top-tier, U.S.-domiciled bank holding companies and savings and loan holding companies,

(1) Total assets (line item 12) as reported on Schedule HC of the FR Y–9C, as applicable, and

(2) Total assets (line item 1, column B) as reported on FR 2320.

(B) Related branches and agencies in the United States (line items 1.i, column A, on Schedule RAL of Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) plus due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, part 1 on Schedule M), as reported on FFIEC 002, provided however that due from head office of parent bank (line item 2.a, column A, part 1 on Schedule M of FFIEC 002) would be included net of due to head office of parent bank (line item 2.a, column B, part 1 on Schedule M of FFIEC 002) when there is a net due from position reported for line item 2.a., while a net due to position for line item 2.a would result in no addition to total assets with respect to line item 2.a, part 1 on Schedule M of FFIEC 002.

(C) U.S.-domiciled nonbank subsidiaries:

(1) For FR Y–7N filers: total assets (line item 10) as reported for each nonbank subsidiary reported on Schedule BS—Balance Sheet of the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N); less balances due from related institutions located in the United States, gross (line item 4.a), as reported on Schedule BS–M—Memoranda.

(2) For FR Y–7NS (annual) filers: total assets (line item 2) as reported for each nonbank subsidiary reported on abbreviated financial statements (page 3) of the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7NS).

(D) For Edge Act and agreement corporations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, claims on nonrelated organizations (line item 9, ''consolidated total'' column on Schedule RC of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b)), plus claims on related organizations domiciled outside the United States (line items 2.a and 2.b, column A on Schedule RC–M), as reported on FR 2886b.

(E) For banks and savings associations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, total assets (line item 12) as reported on Schedule RC—Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), or total assets (line item 12) as reported on Schedule RC—Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), as applicable.

(F) For broker-dealers that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, total assets (line item 16, ''total'' column) as reported on statement of financial condition of the Securities and Exchange Commission's Form X–17A–5 (FOCUS REPORT), Part II, Part IIa, or Part II CSE, as applicable.

(4) *Savings and loan holding companies.* For any savings and loan holding company, other than a foreign savings and loan holding company, total assessable assets will be determined by the average of the savings and loan holding company's total consolidated assets as reported for the assessment period on the regulatory reports on the savings and loan holding company's Form FR Y–9C, column B of the Quarterly Savings and Loan Holding Company Report (FR 2320), or other reports as determined by the Board as applicable to the savings and loan holding company. If the savings and loan holding company is a grandfathered unitary savings and loan holding company, total assessable assets will only include the assets associated with its savings association subsidiary and its other financial activities.

(5) *Nonbank financial companies supervised by the Board.* For a nonbank financial company supervised by the

Board, if the company is a U.S. company, this amount will be the average of the nonbank financial company's total consolidated assets as reported for the assessment period on such regulatory or other reports as are applicable to the nonbank financial company determined by the Board; if the company is a foreign company, this amount will be the average of the nonbank financial company's total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies, as reported for the assessment period on such regulatory or other reports as determined by the Board as applicable to the nonbank financial company.

§ 246.5 Notice of Assessment and Appeal

(a) *Notice of Assessment.* The Board shall issue a notice of assessment to each assessed company no later than July 15 of each calendar year following the assessment period.

(b) *Appeal Period.*

(1) Each assessed company will have thirty calendar days from July 15 to submit a written statement to appeal the Board's determination (i) that the company is an assessed company; or (ii) of the company's total assessable assets.

(2) The Board will respond with the results of its consideration to an assessed company that has submitted a written appeal within 15 calendar days from the end of the appeal period.

§ 246.6 Collection of Assessments; Payment of Interest.

(a) *Collection date.* Each assessed company shall remit to the Federal Reserve the amount of its assessment using the Fedwire Funds Service by September 30 of the calendar year following the assessment period.

(b) *Payment of interest.*

(1) If the Board does not receive the total amount of an assessed company's assessment by the collection date for any reason not attributable to the Board, the assessment will be delinquent and the assessed company shall pay to the Board interest on any sum owed to the Board according to this rule (delinquent payments).

(2) Interest on delinquent payments will be assessed beginning on the first calendar day after the collection date, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United State Treasury Department's current value of funds rate (the ''CVFR percentage''); issued under the Treasury Fiscal Requirements Manual and published quarterly in the **Federal Register**. Each delinquent payment will be charged interest based on the CVFR percentage applicable to the quarter in which all or part of the assessment goes unpaid.

By order of the Board of Governors of the Federal Reserve System, April 12, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–09061 Filed 4–17–13; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2013–0009]

RIN 3170–AA37

Amendments to the 2013 Escrows Final Rule Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: This rule proposes clarifying and technical amendments to a final rule issued by the Bureau of Consumer Financial Protection (Bureau) on January 10, 2013, which, among other things, lengthens the time for which a mandatory escrow account established for a higher-priced mortgage loan (HPML) must be maintained. The rule also established an exemption from the escrow requirement for certain creditors that operate predominantly in ''rural'' or ''underserved'' areas. The amendments clarify the determination method for the ''rural'' and ''underserved'' designations and keep in place certain existing protections for HPMLs until other similar provisions take effect in January 2014.

DATES: Comments must be received on or before May 3, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2013–0009 or RIN 3170–AA37, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Whitney Patross, Attorney; Joseph Devlin and Richard Arculin, Counsels; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Public Law 111–203, 124 Stat. 1376 (2010) (2013 Title XIV Final Rules). One of these rules was Escrow Requirements Under the Truth in Lending Act (Regulation Z) (2013 Escrows Final Rule),[1] issued on January 10.[2] The rule expanded on an existing Regulation Z requirement that creditors maintain escrow accounts for higher-priced mortgage loans and created an exemption for certain loans made by

[1] 78 FR 4726 (Jan. 22, 2013).

[2] The other rules include: Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z) (2013 ATR Final Rule), 78 FR 6407; High-Cost Mortgages and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) (2013 HOEPA Final Rule), 78 FR 6855; Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215; Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 10695; Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 78 FR 10901; Appraisals for Higher-Priced Mortgage Loans (issued jointly with other agencies) (2013 Interagency Appraisals Final Rule), 78 FR 10367; Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279.

certain creditors that operate predominantly in ''rural'' or ''underserved'' areas. Three other of the 2013 Title XIV Final Rules also contain provisions affecting certain loans made in ''rural'' or ''underserved'' areas.

The Bureau is now proposing certain clarifying and technical amendments to the 2013 Escrows Final Rule, including clarification of how to determine whether a county is considered ''rural'' or ''underserved'' for the application of the escrows requirement and the other Dodd-Frank Act regulations.[3] Specifically, the Bureau is proposing changes to clarify how a county's ''rural'' and ''underserved'' status may be determined based on currently applicable Urban Influence Codes (UICs) established by the United States Department of Agriculture, Economic Research Service (USDA–ERS) (for ''rural'') or based on Home Mortgage Disclosure Act (HMDA) data (for ''underserved'') and to provide illustrations of the rule to facilitate compliance.

In addition, the proposal would restore certain existing Regulation Z requirements related to the consumer's ability to repay and prepayment penalties for HPMLs. The scope of these protections is being expanded in connection with the 2013 Title XIV Final Rules to apply to most mortgage transactions, rather than just HPMLs. For this reason, the 2013 Escrows Final Rule removed the regulatory text providing these protections solely to HPMLs. That final rule, however, takes effect on June 1, 2013, whereas the new ability-to-repay and prepayment penalty provisions do not take effect until January 10, 2014. To prevent any interruption in applicable protections, this proposal would establish a temporary provision to ensure the protections remain in place for HPMLs until the expanded provisions take effect in January 2014.

In addition, the Bureau is making some technical corrections to enhance clarity.

[3] The specific provisions that rely on the ''rural'' and ''underserved'' definitions are as follows: (1) The § 1026.35(b)(2)(iii) exemption to the 2013 Escrows Final Rule's escrow requirement for higher-priced mortgage loans; (2) the § 1026.43(f) allowance for balloon-payment qualified mortgages; (3) the § 1026.32(d)(1)(ii)(C) exemption from the balloon payment prohibition on high-cost mortgages; and (4) the § 1026.35(c)(4)(vii)(H) exemption from the § 1026.35(c)(4)(i) HPML second appraisal requirement for credit transactions made by creditors located in a rural county.

II. Background

A. Title XIV Rulemakings Under the Dodd-Frank Act and the 2013 Escrows Final Rule

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and, under sections 1061 and 1100A, generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA), in the Bureau.[4] At the same time, Congress significantly amended the statutory requirements governing mortgages with the intent to restrict the practices that contributed to and exacerbated the crisis. In January 2013, the Bureau issued the 2013 Title XIV Final Rules. The 2013 Escrows Final Rule,[5] issued on January 10, was one of these rules. Among the 2013 Title XIV Final Rules in January were the 2013 ATR Final Rule, 2013 HOEPA Final Rule, and 2013 Interagency Appraisals Final Rule.

B. Implementation Plan for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of the new mortgage rules (Implementation Plan),[6] under which the Bureau would work with the mortgage industry to ensure that the 2013 Title XIV Final Rules can be implemented accurately and expeditiously. The Implementation Plan included: (1) Coordination with other agencies; (2) publication of plain-language guides to the new rules; (3) publication of additional interpretive guidance and other updates regarding the new rules as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This proposed rule is the first publication of additional guidance and updates regarding the 2013 Title XIV Final Rules. Priority for this first set of updates has been given to the 2013 Escrows Final Rule because the effective date is June 1, 2013, and certainty regarding compliance is a matter of some urgency. Another update to certain of the 2013 Title XIV Final Rules will be proposed shortly, which will affect provisions that take effect in January 2014, and others will be issued as needed.

[4] Sections 1011 and 1021 of the Dodd-Frank Act, in title X, the ''Consumer Financial Protection Act,'' Public Law 111–203, secs. 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603. Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

[5] 78 FR 4726 (Jan. 22, 2013).

[6] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Federal Reserve Board (Board) and the Department of Housing and Urban Development (HUD). The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[7] TILA, title X of the Dodd-Frank Act, and certain subtitles and provisions of title XIV of the Dodd-Frank Act are Federal consumer financial laws.[8] Accordingly, the Bureau has authority to issue regulations pursuant to TILA, title X, and the enumerated subtitles and provisions of title XIV.

The Bureau is proposing to amend the 2013 Escrows Final Rule.[9] This proposed rule relies on the broad rulemaking authority specifically granted to the Bureau by TILA section 105(a) and title X of the Dodd-Frank Act, as well as the exemption authority in TILA section 129D(c). Additionally, the proposed rule relies on the rulemaking authority used in connection with the 2013 HOEPA Final Rule,[10] including RESPA section 19(a) and TILA section 129(p).

[7] 12 U.S.C. 5581(a)(1).

[8] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA), Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining ''enumerated consumer laws'' to certain subtitles and provisions of title XIV).

[9] 78 FR 4726 (January 22, 2013).

[10] 78 FR 6856 (January 31, 2013).

IV. Section-by-Section Analysis

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(1)

The Bureau is making a technical correction to 1026.35(b)(1) to update a citation.

35(b)(2) Exemptions

''Rural'' or ''Underserved'' Designation

Four of the Bureau's January 2013 mortgage rules included provisions that provide for special treatment under various Regulation Z requirements for certain credit transactions made by creditors operating predominantly in ''rural'' or ''underserved'' areas: (1) § 1026.35(b)(2)(iii) provides an exemption to the 2013 Escrows Final Rule's escrow requirement for HPMLs; (2) § 1026.43(f) provides an allowance to originate balloon-payment qualified mortgages under the 2013 ATR Final Rule; (3) § 1026.32(d)(1)(ii)(C) provides an exemption from the balloon payment prohibition on high-cost mortgages under the 2013 HOEPA Final Rule; and (4) § 1026.35(c)(4)(vii)(H) provides an exemption from a requirement to obtain a second appraisal for certain HPMLs under the 2013 Interagency Appraisals Final Rule. These provisions rely on the criteria for ''rural'' and/or ''underserved'' counties set forth in § 1026.35(b)(2)(iv)(A) and (B), respectively, of the 2013 Escrows Final Rule, which takes effect on June 1, 2013.

Two special provisions for creditors operating predominantly in ''rural'' or ''underserved'' areas were set forth in the Dodd-Frank Act amendments to TILA, but the terms were not defined by statute. TILA section 129D, as added and amended by Dodd-Frank Act sections 1461 and 1462 and implemented by § 1026.35(b), generally requires that creditors establish escrow accounts for HPMLs secured by a first lien on a consumer's principal dwelling, but the statute also authorizes the Bureau to exempt from this requirement transactions by a creditor that, among other criteria, ''operates predominantly in rural or underserved areas.'' TILA section 129D(c)(1). Similarly, the ability-to-repay provisions in Dodd-Frank Act section 1412 contain a set of criteria with regard to certain balloon-payment mortgages originated and held in portfolio by certain creditors that operate predominantly in rural or underserved areas, allowing those loans to be considered qualified mortgages. *See* TILA section 129C(b)(2)(E), 15 U.S.C. 1639c(b)(2)(E). In the 2013 Escrows and ATR Final Rules, the Bureau implemented the HPML escrows requirement and the section 1412 balloon-payment qualified mortgage provision through §§ 1026.35(b)(2)(iii) and 1026.43(f), respectively. In addition, the Bureau adopted an exemption to the general prohibition of balloon payments for high-cost mortgages when those mortgages meet the criteria for balloon-payment qualified mortgages set forth in § 1026.43(f), as part of the 2013 HOEPA Final Rule, in § 1026.32(d)(1)(ii)(C). Finally, the Bureau and other Federal agencies adopted § 1026.35(c)(4)(vii)(H), which provides an exemption from a requirement to obtain a second appraisal for certain HPMLs under the 2013 Interagency Appraisals Final Rule for credit transactions made by creditors in rural counties.

Through the 2013 Escrows Final Rule, the Bureau adopted § 1026.35(b)(2)(iv)(A) and (B) to define ''rural'' and ''underserved'' respectively for the purposes of the four rules discussed above that contain special provisions that use one or both of those terms. The 2013 Escrows Final Rule also provided comment 35(b)(2)(iv)–1 to clarify further the criteria for ''rural'' and ''underserved'' counties, and provided that the Bureau will annually update on its public Web site a list of counties that meet the definitions of rural and underserved in § 1026.35(b)(2)(iv). In advance of the rule's June 1 effective date, the Bureau is proposing to amend § 1026.35(b)(2)(iv) and comment 35(b)(2)(iv)–1 to clarify how to determine whether a county is rural or underserved for the purposes of these provisions.

35(b)(2)(iii)

The Bureau is proposing modifications to § 1026.35(b)(2)(iii) and comment 35(b)(2)(iii)–1.i for clarification purposes and for consistency with other provisions. As adopted, § 1026.35(b)(2)(iii) and its commentary state that the Bureau will designate or determine which counties are rural or underserved for the purposes of the special provisions of the four rules discussed above. This was not the Bureau's intent. Rather, the Bureau intended to require determinations of ''rural'' or ''underserved'' status to be made by creditors as prescribed by § 1026.35(b)(2)(iv)(A) and (B), but also intended for the Bureau to apply both tests to each U.S. county and publish an annual list of counties that satisfy either test for a given calendar year, which creditors may rely upon as a safe harbor. The Bureau is proposing modifications to § 1026.35(b)(2)(iii)(A) and comment 35(b)(2)(iii)–1.i for the purposes of clarification and consistency with these provisions.

35(b)(2)(iv)(A)

''Rural''

As adopted, § 1026.35(b)(2)(iv)(A) defines ''rural'' based on currently applicable UICs established by the USDA–ERS. The UICs are based on the definitions of ''metropolitan statistical area'' and ''micropolitan statistical area'' as developed by the Office of Management and Budget (OMB), along with other factors reviewed by the ERS that place counties into twelve separately defined UICs depending, in part, on the size of the largest city and town in the county. Based on these definitions, § 1026.35(b)(2)(iv)(A) as adopted states that a county is ''rural'' during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by OMB and applied under currently applicable UICs.

As adopted, comment 35(b)(2)(iv)–1.i explains that, for the purposes of the provision, the terms ''metropolitan statistical areas'' and ''micropolitan statistical areas adjacent to a metropolitan statistical area'' are given the same meanings used by USDA–ERS for the purposes of determining UICs. The USDA–ERS considers micropolitan counties as ''adjacent'' to a metropolitan statistical area for this purpose if they abut a metropolitan statistical area and have at least 2% of employed persons commuting to work in the core of the metropolitan statistical area.[11] It is thus implicit in this comment that ''adjacent'' is given the same meaning used by the USDA–ERS for the purposes of § 1026.35(b)(2)(iv)(A).

Nevertheless, the Bureau believes additional commentary that explains the meaning of ''adjacent'' more directly would be useful to facilitate compliance with § 1026.35(b)(2)(iv) and the provisions that rely on it. Accordingly, the Bureau is proposing to amend comment 35(b)(2)(iv)–1.i. to state expressly that ''adjacent'' entails physical contiguity with a metropolitan statistical area where certain minimum commuting standards are also met, as defined by the USDA–ERS. The Bureau believes this is consistent with USDA–ERS's use of ''adjacent'' and better explains the rule for compliance purposes.

Similarly, the Bureau is proposing language to specify under § 1026.35(b)(2)(iv)(A) how ''rural'' status

[11] *See http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx.*

should be determined for a county that does not have a currently applicable UIC because it was created after the USDA–ERS last categorized counties by UIC. Because the USDA–ERS only updates UICs decennially based on the most recent census, it is possible that new counties may be created that will not have a designated UIC until after the next census. In such instances, clarification is needed to explain how ''rural'' status would be determined. The Bureau is proposing to amend comment 35(b)(2)(iv)–1.i to address this issue and explain that any such county is considered ''rural'' for the purposes of § 1026.35(b)(2)(iv) only if all counties from which the new county's land was taken are themselves rural under the rule.

The Bureau is also proposing comment 35(b)(2)(iv)–2.i to provide an example of how ''rural'' status is determined. In addition, the Bureau is making small technical changes to the rule provision and commentary to enhance clarity.

35(b)(2)(iv)(B)

''Underserved''

Section 1026.35(b)(2)(iii)(A) creates an exemption from the HPML escrow requirement for transactions by creditors operating in rural or underserved counties, if they meet certain criteria involving the loans they originated *during the preceding calendar year.* Thus, the availability of the rural or underserved exemption always follows a year after the origination activity that makes a creditor eligible for the exemption.

As adopted by the 2013 Escrows Final Rule, § 1026.35(b)(2)(iv)(B) states that a county is ''underserved'' during a calendar year if, ''according to Home Mortgage Disclosure Act (HMDA) data for that year,'' no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. However, HMDA data typically are released for a given calendar year during the third or fourth quarter of each subsequent calendar year. It is thus not generally possible for creditors to make determinations concerning whether a county was underserved during the preceding calendar year based on that preceding year's HMDA data, because such data likely will not be available until late in the following year. In wording § 1026.35(b)(2)(iv)(B) as it did, the Bureau did not intend to require the use of HMDA data that is not yet available at the time the determination of a county's ''underserved'' status is made; the Bureau's intent was to provide for the use of the most recent HMDA data available at the time of the determination.

The Bureau therefore is proposing to amend § 1026.35(b)(2)(iv)(B) to clarify that a county is considered ''underserved'' during a given calendar year based on HMDA data for ''the preceding calendar year'' as opposed to ''that calendar year.'' This look-back feature coordinates with the look-back feature in the exemption itself at § 1026.35(b)(2)(iii)(A), so that a creditor would rely on the underserved status of a county based on HMDA data from two years previous to the use of the exemption, which are the most recent data available for use as the Bureau intended. The Bureau is also proposing to amend comment 35(b)(2)(iv)–1.ii to conform to this change, and to add proposed comment 35(b)(2)(iv)–2.ii to provide an example.

1026.35(e) Repayment Ability, Prepayment Penalties

The Bureau is proposing language in § 1026.35(e) to keep in place existing requirements contained in § 1026.35(b) concerning assessment of consumers' ability to repay an HPML and limitations on prepayment penalties for HPMLs. These provisions were originally adopted by the Board in 2008,[12] and will be supplanted by the Bureau's new rules implementing similar Dodd-Frank requirements in § 1026.43 on January 10, 2014.

The 2013 Escrows Final Rule inadvertently removed the existing language of § 1026.35(b) between June 1, 2013 and the January 10, 2014, effective date for the ability-to-repay and prepayment penalty provisions in § 1026.43. This proposed rule would restore this language at § 1026.35(e) and keep it in effect during that intervening period. The Bureau is also proposing to update existing cross-references to the § 1026.35(b) HPML provisions.

V. Effective Date

The Bureau contemplates making the proposed § 1026.35(e) effective from June 1, 2013, through and including January 9, 2014, and making the other proposed amendments effective on June 1, 2013. Section 553(d) of the Administrative Procedure Act generally requires the effective date of a final rule to be at least 30 days after publication of a rule, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). The Bureau believes the proposed amendments would likely fall under one or more of these exceptions to section 553(d). The Bureau particularly notes that making the proposed amendments effective on June 1, 2013, would ease compliance and reduce disruption in the market, and ensure that the protections of the rule are uninterrupted.

VI. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

The Bureau is considering the potential benefits, costs, and impacts of the proposed rule.[13] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult with, the prudential regulators, SEC, HUD, FHFA, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposal would clarify how to determine whether a county is considered ''rural'' or ''underserved'' for the application of the special provisions adopted in certain of the 2013 Title XIV Final Rules.[14] These changes would not have a material impact on consumers or covered persons.

Other provisions of the proposed rule are related to underwriting and features of HPMLs. As described above, existing

[12] 73 FR 44522 (July 30, 2008).

[13] Section 1022(b)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 5521(b)(2), directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on insured depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives that those agencies administer.

[14] The special provisions that rely on the ''rural'' and ''underserved'' definitions are as follows: (1) The § 1026.35(b)(2)(iii) exemption to the 2013 Escrows Final Rule's escrow requirement for higher-priced mortgage loans; (2) the § 1026.43(f) allowance for balloon-payment qualified mortgages; (3) the § 1026.32(d)(1)(ii)(C) exemption from the balloon payment prohibition on high-cost mortgages; and (4) the § 1026.35(c)(4)(vii)(H) exemption from the § 1026.35(c)(4)(i) HPML second appraisal requirement for credit transactions made by creditors located in a rural county.

Regulation Z contains requirements related to the consumer's ability to repay and prepayment penalties for HPMLs. The scope of these protections is being expanded in connection with the Dodd-Frank Act title XIV rulemakings to apply to most mortgage transactions, rather than just HPMLs. For this reason, the 2013 Escrows Final Rule removed the regulatory text providing these protections solely to HPMLs. That final rule, however, takes effect on June 1, 2013, whereas the new ability-to-repay and prepayment penalty provisions do not take effect until January 10, 2014. Absent a correction, as proposed, the final rules issued in January would inadvertently create an interruption in applicable protections for certain consumers obtaining HPMLs effective June 1, and a corresponding relaxation of the requirements for lenders. This proposal would establish a temporary provision to ensure the protections remain in place for HPMLs until the expanded provisions take effect in January 2014. Because this interruption was inadvertent, the Bureau's 1022 analyses in the 2013 Title XIV Final Rules considered the impact of the protections at issue in this rule as if they were remaining in place.

B. Potential Benefits and Costs to Consumers and Covered Persons

Compared to the baseline established by the issuance of the final rules issued in January 2013, the proposed rule would offer consumers who obtain HPMLs from June 1, 2013 through and including January 9, 2014 the benefit of the existing protections under Regulation Z regarding ability-to-repay and prepayment penalties.[15] These provisions are designed to limit consumers' exposure to collateral-based lending, potentially harmful prepayment penalties and other harms. The price of HPMLs may be slightly higher than they would be in the absence of these protections; however, these effects are likely to be minimal.

Compared to the same baseline, covered persons issuing such mortgages during this time period would incur any costs related to the ability-to-pay requirements and the restrictions on certain prepayment penalties. These costs would include the costs of documenting and verifying the consumer's ability to repay and some expected litigation-related costs. As noted above, the evidence to date is that these costs are quite limited. The 2013 ATR Final Rule and the Board's earlier 2008 HOEPA Final Rule (73 FR 44522 (July 30, 2008)) discuss these costs and benefits in greater detail. This rule simply extends these impacts from June 1, 2013 through and including January 9, 2014. The Bureau also believes that the proposed rule would benefit both consumers and covered persons in limiting unnecessary and possibly disruptive changes in the regulatory regime.

The proposed rule may have a small differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026. To the extent that HPMLs comprise a larger percentage of originations at these institutions, the relative increase in costs may be higher relative to other lenders.

The proposed rule would have some differential impacts on consumers in rural areas. In these areas, a greater fraction of loans are HPMLs. As such, to the extent that these added protections lead to additional lender costs, interest rates may be slightly higher on average; however, rural consumers will derive greater benefit from the proposed provisions than non-rural consumers.

Given the small changes for the proposed rule, the Bureau does not believe that the proposed rule would meaningfully reduce consumers' access to credit.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[16] These analyses must ''describe the impact of the proposed rule on small entities.'' [17] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[18] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[19] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[20]

This rulemaking is part of a series of rules that have revised and expanded the regulatory requirements for entities that offer HPMLs. In January 2013, the Bureau adopted the 2013 Escrows Final Rule and 2013 ATR Final Rule, along with other related rules mentioned above. Section VIII of the supplementary information to each of these rules set forth the Bureau's analyses and determinations under the RFA with respect to those rules. See 78 FR 4749, 78 FR 6575. The Bureau also notes because the potential interruption in applicable protections created by the issuance of the final rules in January was inadvertent, its Regulatory Flexibility analyses considered the impact of the protections at issue in this rule remaining in place for HPMLs until the expanded provisions take effect in January 2014. Because these rules qualify as ''a series of closely related rules,'' for purposes of the RFA, the Bureau relies on those analyses and determines that it has met or exceeded the IRFA requirement.

In the alternative, the Bureau also concludes that the proposed rule would not have a significant impact on a substantial number of small entities. The proposal would establish a temporary provision to ensure the protections remain in place for HPMLs until the expanded provisions take effect in January 2014. Since the new requirements and liabilities that will take effect in January 2014 as applied to higher-priced mortgage loans are very similar in nature to those that exist under the pre-existing regulations, the gap absent the proposed correction would be short-lived and would affect only the higher-priced mortgage loan market. It is therefore very unlikely absent the proposed correction that covered persons would alter their behavior substantially in the intervening period.

The proposal would also clarify how to determine whether a county is considered ''rural'' or ''underserved'' for the application of the special provisions adopted in certain of the 2013 Title XIV

[15] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

[16] 5 U.S.C. 601 *et. seq.*

[17] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[18] 5 U.S.C. 605(b).

[19] 5 U.S.C. 605(c).

[20] 5 U.S.C. 609.

Final Rules.[21] These changes would not have a material impact on small entities.

As such, the Bureau affirms that the proposal would not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

This proposed rule would amend 12 CFR part 1026 (Regulation Z), which implements the Truth in Lending Act (TILA). Regulation Z currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation Z is 3170–0015. However, the Bureau has determined that this proposed rule would not materially alter these collections of information nor impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Comments on this determination may be submitted to the Bureau as instructed in the **ADDRESSES** section of this Notice and to the attention of the Paperwork Reduction Act Officer.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Mortgages, Recordkeeping requirements, Reporting, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to further amend Regulation Z, 12 CFR part 1026, as amended by the final rule published on January 22, 2013, 78 FR 4726, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601; 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart C—Closed-End Credit

■ 2. Section 1026.23 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1026.23 Right of rescission.

(a) * * *

(3) * * *

(ii) For purposes of this paragraph (a)(3), the term ''material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.35(e)(2).

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 3. Section 1026.34 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 1026.34 Prohibited acts or practices in connection with high-cost mortgages.

(a) * * *

(4) * * *

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are expected property taxes, premiums for mortgage-related insurance required by the creditor as set forth in § 1026.35(b), and similar expenses.

■ 4. Section 1026.35 is amended by revising paragraphs (b)(1), (b)(2)(iii)(A) and (b)(iv)(A) and (B), and adding paragraph (e), to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * * For purposes of this paragraph (b), the term ''escrow account'' has the same meaning as under Regulation X (12 CFR 1024.17(b)), as amended.

(2) *Exemptions.* Notwithstanding paragraph (b)(1) of this section:

* * * * *

(iii) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction if, at the time of consummation:

(A) During the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either ''rural'' or ''underserved,'' as set forth in paragraph (b)(2)(iv) of this section;

* * * * *

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

(A) A county is ''rural'' during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as ''rural'' for a particular calendar year.

(B) A county is ''underserved'' during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as ''underserved'' for a particular calendar year.

* * * * *

(e) *Repayment ability, Prepayment penalties.* Higher-priced mortgage loans are subject to the following restrictions:

(1) *Repayment ability.* A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation as provided in § 1026.34(a)(4).

(2) *Prepayment penalties.* A loan may not include a penalty described by § 1026.32(d)(6) unless:

(i) The penalty is otherwise permitted by law, including § 1026.32(d)(7) if the loan is a mortgage transaction described in § 1026.32(a); and

(ii) Under the terms of the loan:

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(C) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(3) *Sunset of requirements on repayment ability and prepayment penalties.* The requirements described in paragraphs (e)(1) and (e)(2) of this section shall expire on January 10, 2014.

■ 5. In Supplement I to Part 1026—Official Interpretations:

■ A. Under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages,* under *Paragraph 32(d) Limitations,* paragraph 1 is revised.

■ B. Under *Section 1026.34—Repayment Ability*

■ i. Under Paragraph 34(a)(4) Repayment ability for high-cost mortgages, paragraph 1 is revised.

■ ii. Under Paragraph 34(a)(4)(i) Mortgage-Related Obligations, paragraph 1 is revised.

[21] The special provisions that rely on the ''rural'' and ''underserved'' definitions are as follows: (1) the § 1026.35(b)(2)(iii) exemption to the 2013 Escrows Final Rule's escrow requirement for higher-priced mortgage loans; (2) the § 1026.43(f) allowance for balloon-payment qualified mortgages; (3) the § 1026.32(d)(1)(ii)(C) exemption from the balloon payment prohibition on high-cost mortgages; and (4) the § 1026.35(c)(4)(vii)(H) exemption from the § 1026.35(c)(4)(i) HPML second appraisal requirement for credit transactions made by creditors located in a rural county.

■ C. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans:*
■ i. Under *Paragraph 35(b)(2)(iii),* paragraphs 1 and i are revised.
■ ii. Under *Paragraph 35(b)(2)(iv),* paragraphs 1, i, ii, 2, i, and ii are revised.
■ iii. The headings *35(e) Rules for Higher-Priced Mortgage Loans* and *Paragraph 35(e)(2)(ii)(C),* and paragraphs 1 and 2 are added.

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

§ 1026.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

Paragraph 32(d) Limitations.

1. *Additional prohibitions applicable under other sections.* Section 1026.34 sets forth certain prohibitions in connection with mortgage credit subject to § 1026.32, in addition to the limitations in § 1026.32(d). Further, § 1026.35 prohibits certain practices in connection with transactions that meet the coverage test in § 1026.35(a). Because the coverage test in § 1026.35(a) is generally broader than the coverage test in § 1026.32(a), most § 1026.32 mortgage loans are also subject to the prohibitions set forth in § 1026.35 (such as escrows), in addition to the limitations in § 1026.32(d).

* * * * *

§ 1026.34—Prohibited Acts or Practices in Connection with High-Cost Mortgages

* * * * *

Paragraph 34(a)(4) Repayment Ability.

1. *Application of repayment ability rule.* The § 1026.34(a)(4) prohibition against making loans without regard to consumers' repayment ability applies to mortgage loans described in § 1026.32(a). In addition, the § 1026.34(a)(4) prohibition applies to higher-priced mortgage loans described in § 1026.35(a). *See* § 1026.35(e)(1).

* * * * *

Paragraph 34(a)(4)(i) Mortgage-Related Obligations.

1. *Mortgage-related obligations.* A creditor must include in its repayment ability analysis the expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in § 1026.35(b), as well as similar mortgage-related expenses. Similar mortgage-related expenses include homeowners' association dues and condominium or cooperative fees.

* * * * *

§ 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, more than 50 percent of the creditor's total first-lien covered transactions, as defined in § 1026.43(b)(1), are secured by properties located in counties that are either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv). Pursuant to that section, a creditor may rely as a safe harbor on a list of counties published by the Bureau to determine whether counties in the United States are rural or underserved for a particular calendar year. Thus, for example, if a creditor originated 90 covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, during 2013, the creditor meets this condition for an exemption in 2014 if at least 46 of those transactions are secured by first liens on properties that are located in such counties.

* * * * *

Paragraph 35(b)(2)(iv).

1. *Requirements for ''rural'' or ''underserved'' status.* A county is considered to be ''rural'' or ''underserved'' for purposes of § 1026.35(b)(2)(iii)(A) if it satisfies either of the two tests in § 1026.35(b)(2)(iv). The Bureau applies both tests to each county in the United States. If a county satisfies either test, the Bureau will include the county on a published list of ''rural'' or ''underserved'' counties for a particular calendar year. To facilitate compliance with appraisal requirements in § 1026.35(c), the Bureau will also create a list of only those counties that are ''rural'' but excluding those that are only ''underserved.'' The Bureau will post on its public Web site the applicable lists for each calendar year by the end of that year, thus permitting creditors to ascertain the availability to them of the exemption during the following year. For 2012, however, the list will be published before June 1, 2013. A creditor may rely as a safe harbor, pursuant to section 130(f) of the Truth in Lending Act, on the lists of counties published by the Bureau to determine whether a county qualifies as ''rural'' or ''underserved'' for a particular calendar year. A creditor's originations of covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, in such counties during that year are considered in determining whether the creditor satisfies the condition in § 1026.35(b)(2)(iii)(A) and therefore will be eligible for the exemption during the following calendar year.

i. Under § 1026.35(b)(2)(iv)(A), a county is rural during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area. These areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). Accordingly, for purposes of § 1026.35(b)(2)(iv)(A), ''adjacent'' has the meaning applied by the USDA–ERS in determining a county's UIC; as so applied, ''adjacent'' entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. Specifically, a county is ''rural'' if the USDA–ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA–ERS Web site at *http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx.* A county for which there is no currently applicable UIC (because the county has been created since the USDA–ERS last categorized counties) is rural only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under § 1026.35(b)(2)(iv)(B), a county is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. Specifically, a county is ''underserved'' if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions with HMDA geocoding that places the properties in that county. For purposes of this determination, because only covered transactions are counted, all first-lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as ''Not owner-occupied'' (HMDA code 2), the property type is reported as ''Multifamily'' (HMDA code 3), the applicant's or co-applicant's race is reported as ''Not applicable'' (HMDA code 7), or the applicant's or co-applicant's sex is reported as ''Not applicable'' (HMDA code 4). The most recent HMDA data are available at *http://www.ffiec.gov/hmda.*

2. *Examples.* i. A county is considered ''rural'' for a given calendar year based on the most recent available UIC designations, which are updated by the USDA–ERS once every ten years. As an example, assume a creditor makes first-lien covered transactions in County X during calendar year 2014, and the most recent UIC designations have been published in the second quarter of 2013. To determine ''rural'' status for County X during calendar year 2014, the creditor will use the 2013 UIC designations. However, to determine ''rural'' status for County X during 2012 or 2013, the creditor would use the UIC designations last published in 2003.

ii. A county is considered ''underserved'' for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first-lien covered transactions in County Y during calendar year 2013, and the most recent HMDA data is for calendar year 2012, published in the third quarter of 2013. To determine ''underserved'' status for County Y in calendar year 2013 for the purposes of qualifying for the ''rural or underserved'' exemption in calendar year 2014, the creditor will use the 2012 HMDA data.

* * * * *

35(e) Rules for Higher-Priced Mortgage Loans

Paragraph 35(e)(2)(ii)(C).

1. *Payment change.* Section 1026.35(e)(2) provides that a loan subject to this section may not have a penalty described by § 1026.32(d)(6) unless certain conditions are met. Section 1026.35(e)(2)(ii)(C) lists as a condition that the amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. For examples showing whether a prepayment penalty is permitted or prohibited in connection with particular payment changes, see comment 32(d)(7)(iv)–1. Those examples, however, include a condition that § 1026.35(e)(2) does not include: the condition that, at consummation, the consumer's total monthly debt payments may not exceed 50 percent of the consumer's monthly gross income. For guidance about circumstances in which payment changes are not considered payment changes for purposes of this section, see comment 32(d)(7)(iv)–2.

2. *Negative amortization.* Section 1026.32(d)(2) provides that a loan described in § 1026.32(a) may not have a payment schedule with regular periodic payments that cause the principal balance to increase. Therefore, the commentary to § 1026.32(d)(7)(iv) does not include examples of payment changes in connection with negative amortization. The following examples show whether, under § 1026.35(e)(2), prepayment penalties are permitted or prohibited in connection with particular payment changes, when a loan agreement permits negative amortization:

i. Initial payments for a variable-rate transaction consummated on January 1, 2010, are $1,000 per month and the loan agreement permits negative amortization to occur. Under the loan agreement, the first date that a scheduled payment in a different amount may be due is January 1, 2014, and the creditor does not have the right to change scheduled payments prior to that date even if negative amortization occurs. A prepayment penalty is permitted with this mortgage transaction provided that the other § 1026.35(e)(2) conditions are met, that is: provided that the prepayment penalty is permitted by other applicable law, the penalty expires on or before December 31, 2011, and the penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or its affiliate.

ii. Initial payments for a variable-rate transaction consummated on January 1, 2010 are $1,000 per month and the loan agreement permits negative amortization to occur. Under the loan agreement, the first date that a scheduled payment in a different amount may be due is January 1, 2014, but the creditor has the right to change scheduled payments prior to that date if negative amortization occurs. A prepayment penalty is prohibited with this mortgage transaction because the payment may change within the four-year period following consummation.

* * * * *

Dated: April 11, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–09058 Filed 4–17–13; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 202

[Docket No. FR–5536–P–01]

RIN 2502–AJ00

Federal Housing Administration (FHA) Approval of Lending Institutions and Mortgagees: Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would streamline the FHA financial statement reporting requirements for lenders and mortgagees who are supervised by federal banking agencies and whose consolidated assets do not meet the thresholds set by their supervising federal banking agencies for submission of audited financial statements (currently set at $500 million in consolidated assets). HUD's regulations currently require all supervised lenders and mortgagees to submit annual audited financial statements as a condition of FHA lender approval and recertification. Through this proposed rule, in lieu of the annual audited financial statements, small supervised lenders and mortgagees would be required to submit the unaudited financial regulatory reports that align with their fiscal year ends and are required to be submitted to their supervising federal banking agencies. Small supervised lenders and mortgagees would only be required to submit audited financial statements if HUD determines that the supervised lenders or mortgagees pose heightened risk to the FHA insurance fund.

This rule does not impact FHA's annual audited financial statements submission requirement for nonsupervised and large supervised lenders and mortgagees. The rule also does not impact those supervised lenders and mortgagees with consolidated assets in an amount that requires that lenders or mortgagees submit audited financial statements to their respective supervising federal banking agencies. Finally, HUD has

taken the opportunity afforded by this proposed rule to make three technical changes to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees.

DATES: *Comment Due Date:* June 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Toma, Deputy Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East SW., Room P3214, Washington, DC 20024–8000; telephone number 202–708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

As part of HUD's efforts to strengthen risk management of the FHA insurance funds, HUD published a final rule on April 20, 2010, entitled, ''Federal Housing Administration: Continuation of FHA Reform—Strengthening Risk Management Through Responsible FHA-Approved Lenders'' (75 FR 20718). The April 20, 2010, final rule increased the net worth requirements for FHA-approved lenders and mortgagees, eliminated HUD's approval of loan correspondents, and amended the general approval standards for lenders and mortgagees. The goal of increasing the net worth requirements was to ensure that FHA-approved lenders and mortgagees are sufficiently capitalized. To monitor compliance with the net worth requirements, the April 20, 2010, final rule requires all lenders and mortgagees to provide annual audited financial statements within 90 days of their fiscal year ends as a condition of FHA approval and recertification. The requirement for the submission of annual audited financial statements applies to all FHA-approved lenders and mortgagees, irrespective of their net worth. Interested readers should refer to the preamble of the April 20, 2010, final rule for additional information regarding the risk management amendments to the FHA program requirements.

II. This Proposed Rule

A. Streamlined Reporting Requirements for Small Supervised Lenders and Mortgagees

Since publication of the April 20, 2010, final rule, HUD has determined that the FHA requirement for all supervised lenders and mortgagees to submit annual audited financial statements may prove to be prohibitively expensive for small supervised lenders and mortgagees who wish to participate in FHA programs. While HUD takes its counterparty risk management responsibilities seriously, HUD seeks to balance its management of risk with the execution of its mission. In order to ensure that FHA products and programs remain available in the communities served by small supervised lenders and mortgagees, HUD proposes through this rule to modify its annual audited financial statements reporting requirement for these institutions.

Lenders and mortgagees supervised by the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); and the National Credit Union Administration (NCUA) (collectively the ''federal banking agencies''), are required to submit audited financial statements to their respective supervising federal banking agencies where the lenders' or mortgagees' consolidated assets meet or exceed the minimum thresholds established by those federal banking agencies; which thresholds are all currently $500 million or more in consolidated assets and are currently codified at 12 CFR 363.1(a) and 12 CFR 715.4(c). Lenders and mortgagees whose consolidated assets for the applicable fiscal year are less than their supervising federal banking agency's threshold for submission of audited financial statements (hereinafter ''small lenders and mortgagees'') are required to submit unaudited financial regulatory reports. These unaudited financial regulatory reports currently include a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the ''Call Report''), a consolidated or fourth quarter Thrift Financial Report, and a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310).

In an effort to be consistent with the financial reporting requirements designated by the supervisory federal banking agencies for small lenders and mortgagees, HUD will no longer require small supervised lenders or mortgagees to submit audited financial statements. Instead, HUD will require that small supervised lenders and mortgagees submit the unaudited financial regulatory reports that they are required to submit to their supervising federal banking agencies. HUD has determined that the financial regulatory reports required by the federal banking agencies contain sufficient information for HUD to ensure that small supervised lenders and mortgagees are suitably capitalized to meet potential needs associated with their participation in FHA lending programs, without the potentially prohibitive financial burden of preparing annual audited financial statements.

In order to manage the risk to the FHA insurance fund, HUD retains the right to request additional financial documentation, up to and including audited financial statements, if HUD determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund. HUD has determined that the following factors are relevant, but not exhaustive, in determining if a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund: (1) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end; (2) maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n); (3) reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances; (4) experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1); (5) experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant; (6) undertaking significant changes to business operations, such as a merger or acquisition; and (7) other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Consistent with the requirements of the federal banking agencies, HUD will continue to require audited financial statements for supervised lenders and mortgagees whose consolidated assets meet or exceed the threshold set by the federal banking agencies, presently located at 12 CFR 363.1(a) and 12 CFR 715.4(c)—currently $500 million or more in consolidated assets. Because the asset threshold established by the federal banking agencies may change over time, this proposed rule references the regulations of the federal banking agencies instead of a numeric figure. HUD specifically seeks comments from small supervised lenders and mortgagees on whether they are required to provide annual audited financial statement to any other regulating body, such as a state agency.

B. Technical Amendments

HUD has taken the opportunity afforded by this proposed rule to make three conforming amendments to current regulations regarding reporting requirements for FHA-approved supervised lenders and mortgagees. These nonsubstantive amendments will codify existing requirements and correct a regulatory citation. The amendments are as follows:

1. *Audited financial statement for large supervised lenders and mortgagees.* The regulations at § 202.7(b)(4) require that nonsupervised lenders and mortgagees comply with HUD's uniform financial reporting standards codified in 24 CFR part 5, subpart H, and establish requirements governing the contents of the required audited financial statements. While the April 20, 2010, final rule codified the requirement that supervised lenders also submit audited financial statements, it did not specify that these statements must be submitted in accordance with the same requirements as those applicable to nonsupervised institutions under § 202.7(b)(4). Instead, HUD clarified via mortgagee letter that supervised lenders and mortgagees should comply with the audit requirements of § 202.7(b)(4).[1] This proposed rule would codify the mortgagee letter guidance by adding a new § 202.6(b)(4) to govern audited financial statements submitted by supervised lenders and mortgagees. Consistent with existing practice, the new provision mirrors the language of § 202.7(b)(4).

2. *Technical correction to uniform financial reporting standards.* The applicability section of HUD's uniform financial reporting regulations (§ 5.801) was not updated by the April 20, 2010, final rule. Accordingly, § 5.801(a)(5) of those regulations still provides that the uniform financial standards apply to ''nonsupervised lenders, nonsupervised mortgagees, and loan correspondents.'' The April 20, 2010, final rule eliminated HUD's approval of loan correspondents and clarified that supervised lenders and mortgagees are also subject to the uniform financial reporting requirements. This proposed rule would make the conforming amendments to § 5.801(a)(5).

3. *Technical correction to § 202.3(b).* The regulation at § 202.3(b) incorrectly refers to the yearly verification report ''required by § 202.5(n)(2).'' As a result of other changes made by the April 20, 2010, final rule, the verification report requirement is now found in § 202.5(m). This proposed rule corrects the outdated citation.

[1] See Mortgagee Letter 2009–31, issued on September 18, 2009, and available at: *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm.*

III. Costs and Benefits of the Proposed Rule

The total cost savings from the reporting and recordkeeping burden for small supervised lenders and mortgagees would be approximately $110,770. HUD currently has 1,471 approved supervised lenders and mortgagees who are required to submit annual audited financial statements, of which HUD approximates that 857 are small supervised lenders and mortgagees whom this rule will benefit. Under this proposed rule, small supervised lenders and mortgagees would no longer be required to complete and submit the Online Annual Financial Statements and Reports, but would instead submit an electronic copy of the unaudited financial regulatory report that aligns with their fiscal year end, as required by and submitted to their supervising federal banking agency. Currently it takes a lender or mortgagee 3 hours to complete the required Online Annual Financial Statements and Reports submission.[2] HUD estimates that this new requirement would take .25 hours per lender or mortgagee. Therefore, the burden on each lender or mortgagee would be reduced by 2.75 hours. The cost to the lender or mortgagee to complete the Online Annual Financial Statements and Reports is $47 per hour.[3] By submitting the unaudited financial regulatory report required by the lender's or mortgagee's supervised federal banking agency, each small supervised lender or mortgagee would save $129.25, resulting in a total industry savings for all 857 small entities of approximately $110,770. HUD recognizes that additional savings may result for small supervised lenders and mortgagees who no longer complete annual audits as a result of this rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

[2] PRA Submission 2502–0005, *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200910-2502-005.*

[3] *Id.*

This proposed rule would amend 24 CFR part 202. Part 202 currently contains the collection of information approved by OMB, and the OMB control number is 2502–0005. The collection title is, ''HUD–FHA Title I/Title II Lender Approval, Annual Recertification, Noncompliance Forms, Reports, Ginnie Mae Issuer Approval, and Credit Watch Termination Reinstatement.'' As proposed below, this rule would amend the collection of information currently required by ''item n,'' the online submission of annual audited financial statements by Title I and Title II nonsupervised lenders, supervised lenders and nonsupervised loan correspondents, of OMB control number 2502–0005 (hereinafter, Annual Audited Financial Statement). This proposed rule is estimated to reduce the burden in the existing information collection requirement as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of annual audited financial statement respondents	Estimated average time for requirement (hours)	Estimated total burden
Current: 24 CFR part 202 requirements	All Lenders: 3,370 [4]	3.00	10,110 hours.
Proposed: 24 CFR part 202 requirements	Large Supervised and all Nonsupervised Lenders: 2,513.	3.00	7,753.25 hours (7,539 hours and 214.25 hours, respectively).
	Small Supervised Lenders: 857	.25	
Percentage of Burden Change	Estimated net reduction of burden		23%

In accordance [4] with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

(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., by permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposed rule by name and docket number (FR–5583–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947; and

Reports Liaison Officer, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9128, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately 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. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Accordingly, HUD has determined that aligning FHA's financial reporting requirements for small supervised lenders and mortgagees with the financial reporting requirements of the federal banking agencies eliminates unnecessary financial and administrative burdens posed by FHA's current requirement to submit an audited financial statement, and thereby enhances the ability of small supervised lenders and mortgagees to participate in FHA programs. HUD has concluded that the federal banking agencies have controls in place through examination and monitoring to takeover institutions experiencing significant financial distress that pose a risk to depositors. Therefore, the information within the financial regulatory reports being provided to the federal banking agencies is comprehensive and provides the data necessary for FHA to analyze a small supervised lender's or mortgagee's net worth and assets to determine if financial risk is posed to the FHA fund. In a case where a small supervised lender or mortgagee shows sign of financial risk, HUD retains the right to request additional financial documentation, up to and including audited financial statements. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

[4] The current PRA states that 11,000 annual audited financial statements are collected, but loan correspondents are no longer HUD-approved and required to submit annual audited financial statements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule is specifically intended to ease the regulatory burden on small entities. The current regulations require full independent audited financial statements, over and above what is required by federal banking agencies in their oversight of these small supervised lenders and mortgagees. This proposed rule would bring HUD's reporting practices in line with that of the federal banking agencies and, as discussed above, reduce the cost of participating in FHA programs by releasing small supervised lenders and mortgagees from the requirement to submit annual audited financial statements. Instead the rule would require the submission of the unaudited financial regulatory report already required by the small supervised lender's or mortgagee's supervising federal banking agency.

Notwithstanding HUD's determination that this rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction. Nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the procedures governing the submission of financial reports by small supervised lenders and mortgagees applying to participate, or recertifying for participation, in FHA's single-family programs. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5 and 202 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Revise § 5.801 paragraph (a)(5) to read as follows:

§ 5.801 Uniform financial reporting standards.

(a) * * *

(5) HUD-approved Title I and Title II supervised and nonsupervised lenders and mortgagees.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 3. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

■ 4. In § 202.3 paragraph (b), revise the citation to ''§ 202.5 (n)(2)'' to read ''§ 202.5 (m)''.

■ 5. Revise § 202.5 paragraph (g) to read as follows:

§ 202.5 General approval standards.

* * * * *

(g) *Financial statements.* Except as provided in § 202.6(c), the lender or mortgagee shall furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

* * * * *

■ 6. In § 202.6, add new paragraphs (b)(4) and (c) to read as follows:

§ 202.6 Supervised lenders and mortgagees.

* * * * *

(b) * * *

(4) *Audit report.* Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, subpart H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) Financial statements in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) *Financial statements requirements for small supervised lenders and mortgagees.*

(1) *Definitions.* For the purposes of this section, the following definitions apply:

(i) *Federal banking agency* means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) *Small supervised lender or mortgagee* means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) *Financial statement requirements.* Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also known as the ''Call Report''), a consolidated or fourth quarter Thrift Financial Report, or a consolidated or fourth quarter NCUA Call Report (NCUA Form 5300 or 5310), or such other financial regulatory report as may be required—that aligns with the small supervised lender's or mortgagee's fiscal year end and that the small supervised lender or mortgagee is required to submit to their respective federal banking agency.

(3) *Requirement for audited financial statement and other information based on determination of heightened risk to the FHA insurance fund.* If the Secretary determines that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund, the lender or mortgagee must provide upon request, additional financial documentation, up to and including an audited financial statement, and other information as the Secretary determines necessary. The Secretary may determine that a small supervised lender or mortgagee poses a heightened risk to the FHA insurance fund based upon, but not limited to, one or more of the following factors:

(i) Failing to provide required financial submissions under § 202.6(c)(2) within the required 90-day period following the lender's or mortgagee's fiscal year end;

(ii) Maintaining insufficient adjusted net worth or unrestricted liquid assets as required by § 202.5(n);

(iii) Reporting opening cash and equity balances that do not agree with the prior year's reported cash and equity balances;

(iv) Experiencing an operating loss of 20 percent or greater of the lender's or mortgagee's net worth for the annual reporting period as governed by § 202.5(m)(1);

(v) Experiencing an increase in loan volume over the prior 12-month period, determined by the Secretary to be significant;

(vi) Undertaking significant changes to business operations, such as a merger or acquisition; and

(vii) Other factors that the Secretary considers appropriate in indicating a heightened risk to the FHA insurance fund.

Dated: March 25, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–09131 Filed 4–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–154563–12]

RIN 1545–BL46

Reporting for Premium

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the reporting of bond premium and acquisition premium. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by July 17, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–154563–12), room 5203, Internal Revenue Service, PO 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–154563–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–154563–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Lew, (202) 622–3950; concerning submissions of comments, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6049. The temporary regulations set forth information reporting requirements related to bond premium and acquisition premium. The text of the temporary regulations also serves as the text of these proposed regulations.

Consideration of Administrative Burdens Related to Basis Reporting

A number of commenters have indicated that compliance with basis reporting requirements and the use of basis and other information reported by brokers will require considerable resources and effort on the part of return preparers and information recipients. The Treasury Department and the IRS are continuing to review all aspects of the information reporting process and are exploring ways to reduce the compliance burden for both brokers and for information recipients.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 Internal Revenue 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 businesses.

Comments and Request 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 submitted timely to the IRS as prescribed in the preamble under the ''**ADDRESSES**'' heading. The Treasury Department and the IRS welcome comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available at *www.regulations.gov* for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for a public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). 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 by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6049–9 also issued under 26 U.S.C. 6049(a). * * *

■ **Par. 2.** Section 1.6049–9 is added to read as follows:

§ 1.6049–9 Premium subject to reporting for a debt instrument acquired on or after January 1, 2014.

[The text of proposed § 1.6049–9 is the same as the text of § 1.6049–9T published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–09084 Filed 4–17–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2012–0740; FRL–9377–8]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for eight chemical substances which were the subject of premanufacture notices (PMNs) P–11–327, P–11–328, P–11–329, P–11–330, P–11–331, P–11–332, P–12–298, and P–12–299. This action would require persons who intend to manufacture, import, or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: Comments must be received on or before May 20, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0740, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2012–0740. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0740. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically 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:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@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. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this proposed rule. The following list of North American Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is proposing these SNURs under section 5(a)(2) of TSCA for eight chemical substances which were the subject of PMNs P–11–327, P–11–328, P–11–329, P–11–330, P–11–331, P–11–332, P–12–298, and P–12–299. These SNURs would require persons who intend to manufacture, import, or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of November 2, 2012 (77 FR 66149) (FRL–9366–7), EPA issued direct final SNURs on these eight chemical substances in accordance with the procedures at § 721.160(c)(3)(i). EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by § 721.160(c)(3)(ii), EPA removed the direct final SNURs in a separate document, published in the **Federal Register** of December 21, 2012 (77 FR 75566) (FRL 9373–8), and is now issuing this proposed rule on the eight chemical substances. The record for the direct final SNURs on these chemical substances was established as docket number EPA–HQ–OPPT–2012–0740. That record includes information considered by the Agency in developing the direct final rule and the notice of intent to submit adverse comments.

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 four bulleted TSCA section 5(a)(2) factors listed in Unit III. 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. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 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 rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 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 for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

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, 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 authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the eight chemical substances that are the subject of this proposed rule, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for eight chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VII. for more information).
- CFR citation assigned in the regulatory text section of this proposed rule.

The regulatory text section of this proposed rule specifies the activities designated as significant new uses.

This proposed rule includes PMN substances P–11–327, P–11–328, P–11–329, P–11–330, P–11–331, and P–11–332, that are subject to a ''risk-based'' consent order under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. This consent order requires protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''section 5(e) SNURs'' on these PMN substances are proposed pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent order. The section 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent order.

This proposed rule also includes a SNUR on PMN substances P–12–298 and P–12–299 that were not subject to a consent order under TSCA section 5(e). In this case, EPA did not find that the use scenario described in the PMNs triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMNs could result in increased exposures, thereby constituting a ''significant new use.'' This so-called ''non-section 5(e) SNUR'' is proposed pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Numbers P–11–327, P–11–328, P–11–329, P–11–330, P–11–331, and P–11–332

Chemical names: Distillates (lignocellulosic), C5–40 (P–11–327); Paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (P–11–328); Naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (P–11–329); Kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (P–11–330); Distillates (lignocellulosic), hydrotreated, C8–26—branched, cyclic, and linear (P–11–331); and Residual oils (lignocellulosic), hydrotreated, C20–40- branched, cyclic, and linear (P–11–332).

CAS numbers: 1267611–99–3 (P–11–327), 1267611–06–2 (P–11–328), 1267611–35–7 (P–11–329), 1267611–14–2 (P–11–330), 1267611–11–9 (P–11–331), and 1267611–71–1 (P–11–332).

Effective date of TSCA section 5(e) consent order: July 21, 2012.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) uses of the PMN substances will be as a distillation feedstock after hydrotreatment (P–11–327), as a feedstock (P–11–328), as a blend-stock for conventional fossil fuels (P–11–329, P–11–330, and P–11–331), and use in a manner comparable to gas oil as it is currently used in industry (P–11–332). These PMNs are complex mixtures and have been assessed based on the toxic components within their mixture. The most important and primary component present is benzene. Based on this analysis, EPA identified concerns for oncogenicity, immunosuppression, and skin sensitization (defatting of the skin tissue) to workers exposed to the PMN substances. The EPA Maximum Contaminant Level for benzene in drinking water is 5 parts per billion (ppb). The PMNs' New Chemical Exposure Limit (NCEL) is 0.32 milligram/cubic meter (mg/m^3) as an 8-hour time-weighted average. In addition, based on ecological structure activity relationship (EcoSAR) analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 82 ppb for each of the following: P–11–329 and P–11–331, and 180 ppb for each of the following: P–11–327, P–11–328, P–11–330, and P–11–332. However, EPA does not expect risk to aquatic organisms at the expected levels and duration of exposure as described in the PMNs. The consent order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that these substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the consent order requires:

1. Use of personal protective equipment including dermal protection when there is potential dermal exposure and a National Institute for Occupational Safety and Health

(NIOSH)-certified respirator with an assigned protection factor (APF) of at least 10,000, or compliance with a NCEL of 0.32 mg/m^3 as an 8-hour time-weighted average when there is potential inhalation exposure.

2. No use of the substances resulting in surface water concentrations exceeding 5 ppb of the combination of these PMN substances.

3. Establishment and use of a hazard communication program. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Recommended testing: EPA has determined that a combined chronic toxicity/carcinogenicity test (OPPTS Test Guideline 870.4300); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) would help characterize the human health and environmental effects of the PMN substances. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10612 (P–11–327); 721.10613 (P–11–328); 721.10614 (P–11–329); 721.10615 (P–11–330); 721.10616 (P–11–331); and 721.10617 (P–11–332).

PMN Numbers P–12–298 and P–12–299

Chemical name: Vinylidene ester (generic).

CAS number: Not available.

Basis for action: The PMNs state that the generic uses of the substances will be adhesives. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early-life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substances to surface water exceed releases from the use described in the PMNs. For the described use in the PMNs, significant environmental releases are not expected because environmental releases did not result in surface water concentrations exceeding 7 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that combined production volume of the two PMN substances exceeding 20,000 kilograms per year could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guidelines 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guidelines 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10623.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the eight chemical substances that are subject to these proposed SNURs, EPA concluded that for six of the substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health and environmental effects of the chemical substances. For two of the eight substances, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met. The basis for these findings is outlined in Unit IV.

B. Objectives

EPA is proposing these SNURs for specific chemical substances that have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

• EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.

• EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.

• EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

• EPA would ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the final rule is issued, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for six of the eight chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The other two chemical substances contained in this proposed rule are not regulated with TSCA section 5(e) consent orders. The identities of these two chemical substances have been claimed as confidential, and EPA has received no post-PMN *bona fide* submissions (per § 720.25 and § 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

If uses begun after the direct final rule was published on November 2, 2012, were considered ongoing rather than new, any person could defeat the SNUR by initiating the significant new use before the final rule was issued. Therefore EPA designates November 2, 2012 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture, import, or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

VII. Test Data and Other Information

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

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 (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

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

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

VIII. 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 § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e–PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2012–0740.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would establish SNURs for eight chemical substances that were the subject of PMNs, and in six cases, a TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to the 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 EPA's 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. EPA would amend the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule, if the SNUR is subsequently issued as a final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would 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 between 30 and 170 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.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUR submitted by any small entity would not cost significantly more than $8,300. A copy of that certification is available in the docket for this proposed rule.

This proposed rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit IX. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

• A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

• Submission of the SNUN would not cost any small entity significantly more than $8,300.

Therefore, the promulgation of these SNURs would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

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 reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action would not 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

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. Executive Order 13211

This proposed rule is not subject to 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 expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action would not involve any technical standards the National Technology Transfer and Advancement Act (NTTAA), section 12(d) (15 U.S.C. 272 note), would not apply to this action.

J. Executive Order 12898

This action does 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).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 12, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be 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. Add § 721.10612 to subpart E to read as follows:

§ 721.10612 Distillates (lignocellulosic), C5–40.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m^3) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMNP–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. Add § 721.10613 to subpart E to read as follows:

§ 721.10613 Paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m^3) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 4. Add § 721.10614 to subpart E to read as follows:

§ 721.10614 Naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63 (a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m^3) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10615 to subpart E to read as follows:

§ 721.10615 Kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m³) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10616 to subpart E to read as follows:

§ 721.10616 Distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m³) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–

3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10617 to subpart E to read as follows:

§ 721.10617 Residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(6), (b) (concentration set at 0.1 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10,000 meet the minimum requirements for § 721.63(a)(4): Any NIOSH-certified pressure-demand or other positive pressure mode (e.g., open/closed circuit) self-contained breathing apparatus (SCBA) equipped with a hood or helmet or a full facepiece.

(A) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i) of this section, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.32 milligram/cubic meter (mg/m^3) as an 8-hour time-weighted average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(B) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N=5 and 5 is an aggregate of releases for the following substances: Distillates (lignocellulosic), C5–40 (PMN P–11–327; CAS No. 1267611–99–3); paraffin waxes (lignocellulosic) hydrotreated, C5–40-branched, cyclic and linear (PMN P–11–328; CAS No. 1267611–06–2); naphtha (lignocellulosic), hydrotreated, C5–12-branched, cyclic and linear (PMN P–11–329; CAS No. 1267611–35–7); kerosene (lignocellulosic), hydrotreated, C8–16-branched, cyclic and linear (PMN P–11–330; CAS No. 1267611–14–2); distillates (lignocellulosic), hydrotreated, C8–26-branched, cyclic, and linear (PMN P–11–331; CAS No. 1267611–11–9); and residual oils (lignocellulosic), hydrotreated, C20–40-branched, cyclic, and linear (PMN P–11–332; CAS No. 1267611–71–1)).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (h) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10623 to subpart E to read as follows:

§ 721.10623 Vinylidene ester (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as vinylidene ester (PMNs P–12–298 and P–12–299) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (20,000 kilograms of the aggregate of the two chemical substances).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2013–09155 Filed 4–17–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 13–704]

Wireline Competition Bureau Adds New Discussion Topic to Connect America Cost Model Virtual Workshop

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau adds a new virtual workshop discussion topic, entitled ''Operating Expenses Input Values'' to seek public input.

DATES: Comments are due on or before April 25, 2013.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

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

▪ *Federal Communications Commission's Web site: http://*

fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.

▪ *Virtual Workshop:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Katie King, Wireline Competition Bureau at (202) 418–7491 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 10–90; DA 13–704, released April 11, 2013, as well as information posted online in the Wireline Competition Bureau's Virtual Workshop. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* In addition, the Virtual Workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

1. On Tuesday, October 9, 2012, the Wireline Competition Bureau (Bureau) announced the commencement of a virtual workshop to solicit input and facilitate discussion on topics related to the development and adoption of the forward-looking cost model for Connect America Phase II. To date, the Bureau has sought comment on 22 different topics in the virtual workshop.

2. Today, the Bureau adds a new virtual workshop discussion topic, entitled ''Operating Expenses Input Values.'' Responses should be submitted in the virtual workshop no later than April 25, 2013. Parties can participate in the virtual workshop by visiting the Connect America Fund Web page, *http://www.fcc.gov/encyclopedia/connecting-america,* and following the link to the virtual workshop.

3. Comments from the virtual workshop will be included in the official public record of this proceeding. The Bureau will not rely on anonymous comments posted during the workshop in reaching decisions regarding the model. Participants should be aware that identifying information from parties that post material in the virtual workshop will be publicly available for inspection upon request, even though such information may not be posted in the workshop forums.

I. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau prepared an Initial Regulatory Flexibility Analysis (IRFA), included as part of the *Model Design PN,* 77 FR 38804, June 29, 2012, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in these Public Notices and the information posted online in the Virtual Workshops. We have reviewed the IRFA and have determined that is does not need to be supplemented.

B. Paperwork Reduction Act

5. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Filing Requirements

6. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

7. *Virtual Workshop.* In addition to the usual methods for filing electronic comments, the Commission is allowing comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.* Persons wishing to examine the record in this proceeding are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

8. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs

Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

9. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

Kimberly A. Scardino,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–09154 Filed 4–17–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 22, and 52

[FAR Case 2012–024; Docket 2012–0024; Sequence 1]

RIN 9000–AM49

Federal Acquisition Regulation; Commercial and Government Entity Code

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require the use of Commercial and Government Entity (CAGE) codes, including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold. The CAGE code is a five-character identification number used extensively within the Federal Government. The proposed rule will also require offerors, if owned or controlled by another business entity, to identify that entity during System for Award Management (SAM) registration.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before June 17, 2013 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2012–024 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–024''. Select the link ''Submit a Comment'' that corresponds with FAR Case 2012–024. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–024'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2012–024, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–024.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR with a new provision to require that offerors provide their CAGE codes to contracting officers and that, if owned or controlled by another entity, offerors will provide, in a new provision with their representations and certifications, the CAGE code and name of such entity or entities. For those offerors located in the United States or its outlying areas that register in SAM, a CAGE code is assigned as part of the registration process. Note: The text of this proposed rule uses the new FAR reference, SAM for CCR and ORCA, as there is a pending FAR rule (FAR Case 2012–033, System for Award Management Name Change, Phase 1 Implementation) which will make a global update to all of the existing references to CCR and ORCA throughout the FAR to the SAM designation.

If registration is not required, a CAGE code will be requested and obtained from the Defense Logistics Agency, Logistics Information Service. A CAGE code is not required when a condition described at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. Offerors located outside the United States will obtain an NCAGE from their NATO Codification Bureau or, if not a NATO member or sponsored nation, from the NATO Maintenance and Supply Agency (NAMSA).

The Federal procurement community continues to strive toward greater measures of transparency and reliability of data, which facilitates achievement of rigorous accountability of procurement dollars and processes and compliance with regulatory and statutory acquisition requirements, *e.g.,* the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, 31 U.S.C. 6101 note). Increased transparency and accuracy of procurement data work to broaden the Government's ability to implement fraud detection technologies restricting opportunities for and mitigating occurrences of fraud, waste, and abuse of taxpayer dollars.

To further the desired increases in traceability and transparency, this rule proposes use of the unique identification that a CAGE code provides coupled with vendor representation of ownership and owner CAGE code. The CAGE code is a five-character identification number used extensively within the Federal Government and will provide for standardization across the Federal Government. This proposed rule will—

- Support successful implementation of business tools that seek insight into Federal spending patterns across corporations;
- Facilitate legal traceability in the tracking of performance issues across corporations;
- Provide insight on contractor personnel outside the United States; and
- Support supply chain traceability and integrity efforts.

II. Discussion and Analysis

A. Proposed Changes to FAR Part 4

At FAR 4.1202 a new provision for ownership or control of offeror is added to the list of representations and certifications under FAR 52.204–8, Annual Representations and Certifications.

B. Proposed Addition of FAR Subpart 4.17—Commercial and Government Entity Code

A new subpart is proposed to include scope, policy, and definitions for the subpart. Offerors are required to provide their CAGE code to the contracting officer and to represent if they are owned or controlled by another business entity, unless a condition listed at FAR 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA. The subpart also gives instruction to contracting officers to verify the CAGE codes provided.

A definition of ''Commercial and Government Entity'' code is provided. The definition encompasses both CAGE code, for entities located in the United States and its outlying areas, and NCAGE code if the code is assigned by a NATO Codification Bureau or NAMSA.

The rule proposes definitions of ownership and intends their use only in order to determine how entities relate to one another in terms of hierarchical relationship(s). The rule does not intend to impact or supersede the definitions of ''contractor'' or ''ownership'' as described in other parts of the FAR (*e.g.,* FAR part 19 for determination of small business size status) or other regulations including the Small Business Administration's affiliation rules in the Code of Federal Regulations (CFR), Title 13. DoD, GSA, and NASA expect and encourage public comments in order to determine if these definitions, as proposed, are understandable and straightforward. Definitions proposed are as follows:

''Highest-level owner'' means the business entity that owns or controls one or more business entities that own or control the offeror.

''Immediate owner'' means the business entity that has the most direct and proximate ownership or control of the offeror.

''Owner'' means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

C. Proposed Changes to FAR Subpart 12.3

Changes to the list of other required provisions and clauses at FAR 12.301(d) are proposed to make CAGE code reporting and maintenance applicable to commercial items by including a new provision, FAR 52.204–XX, Commercial and Government Entity Code Reporting, and a new clause, FAR 52.204–ZZ, Commercial and Government Entity Code Maintenance.

D. Proposed Changes to FAR Subpart 22.10

Updates are provided to correct paragraph numbers referencing the provision 52.204–8.

E. Proposed Additions to FAR Part 52, Solicitation, Provisions and Contract Clauses

Two new provisions are proposed, two existing provisions are amended, and one new clause is proposed:

Provision FAR 52.204–XX, Commercial and Government Entity Code Reporting, requires offerors to provide their CAGE codes and contains information on obtaining CAGE codes.

Provision FAR 52.204–YY, Ownership or Control of Offeror, calls for offerors to identify if they are owned or controlled by another entity and to provide the legal name and CAGE code of such entity, if identified.

The proposed rule will amend FAR 52.204–8, Annual Representations and Certifications, by including the new provision FAR 52.204–YY, Ownership or Control of Offeror, and FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, by including definitions and ownership or control representations.

Clause FAR 52.204–ZZ, Commercial and Government Entity Code Maintenance, provides instructions to contractors to maintain accurate CAGE information in the CAGE file and to inform their contracting officer if their CAGE code changes.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

This rule would affect offerors that currently do not have a CAGE code and/or are owned by another entity. This proposed rule would require those offerors without a CAGE code and that do not register through SAM, to request and obtain a CAGE code. In FY2011, awards were made to 2,154 unique vendors that were not required to register through SAM. Of these, 741 were small business vendors. In addition, the proposed rule requires offerors to represent that, if owned or controlled by another entity, they have entered the CAGE code and the legal name of that entity. The Federal Government estimates that it received offers from 413,808 unique vendors in FY2011. Approximately 275,872 of these offers were by unique small businesses and it is estimated that this number of small businesses will be required to respond to the proposed ownership provision.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2012–024), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning Commercial and Government Entity Code (FAR Case 2012–024) to the Office of Management and Budget.

A. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per response to request a CAGE code, .5 hours per response to request an NCAGE code, and .5 hours per response for ownership reporting. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimates were developed using FY2011 Federal procurement data.

The annual reporting burden to obtain CAGE codes is estimated as follows:

Respondents required to obtain a CAGE code: 1,134.

Number of responses per respondent: 1.

Total annual responses: 1,134.

Preparation hours per response: .25.

Subtotal response hours: 284.

Respondents required to obtain an NCAGE code: 1,020.

Number of responses per respondent: 1.

Total annual responses: 1,020.

Preparation hours per response: .5.

Subtotal response hours: 510.

Total CAGE response burden hours: 794 hours.

The annual reporting burden is estimated as follows to respond to ownership provision 52.204–YY requirements:

Respondents: 413,808.

Responses per respondent: 1.

Total annual responses: 413,808.

Preparation hours per response: .5.

Total response burden hours: 206,904.

The combined total of the CAGE hours and the ownership provision hours are 207,698 response burden hours.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 17, 2013 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th floor, Washington, DC 20417. Please cite OMB Control Number 9000–0185, Commercial and Government Entity Code in all correspondence.

List of Subjects in 48 CFR Parts 4, 12, 22, and 52

Government procurement.

Dated: April 15, 2013.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 12, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 12, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by—

■ a. Removing from the introductory paragraph ‘‘Central Contractor Registration’’ and adding ‘‘System for Award Management’’ in its place;

■ b. Redesignating paragraphs (e) through (bb) as paragraphs (f) through (cc), respectively; and

■ c. Adding a new paragraph (e).

The added text reads as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(e) 52.204–YY, Ownership or Control of Offeror.

* * * * *

■ 3. Add Subpart 4.17 to read as follows:

Subpart 4.17—Commercial and Government Entity Code

Sec.

Subpart 4.17—Commercial and Government Entity Code

4.1700 Scope of subpart.

This subpart prescribes policies and procedures for identification of commercial and government entities when it is necessary to—

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities;

(b) Exchange data with another system that requires the unique identification of a contractor entity; or

(c) Identify when offerors are owned or controlled by another entity.

4.1701 Definitions.

As used in this part—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

Highest-level owner means the business entity which owns or controls one or more business entities that own or control the offeror.

Immediate owner means the business entity which has the most direct and proximate ownership or control of the offeror.

Owner means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

4.1702 Policy.

(a) *Commercial and government entity code.* (1) Offerors shall provide the contracting officer the commercial and government entity (CAGE) code assigned to that offeror's location prior to the award of a contract action above the micro-purchase threshold, except when—

(i) A condition listed at 4.605(c)(2) applies; and

(ii) The acquisition is funded by an agency other than DoD or NASA.

(2) The contracting officer shall include the contractor's CAGE code in the contract and in any electronic transmissions of the contract data to other systems, when it is provided in accordance with paragraph (a)(1) of this section.

(b) *Ownership or control of offeror.* Offerors, if owned or controlled by another business entity, shall provide the contracting officer with the CAGE code and legal name of that business entity prior to the award of a contract action above the micro-purchase threshold, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

4.1703 Verifying CAGE codes prior to award.

(a) Contracting officers shall verify the offeror's CAGE code by reviewing the entity's registration in the System for Award Management (SAM). Active registrations in SAM have had the associated CAGE codes verified.

(b) For entities not required to be registered in SAM, the contracting officer shall validate the CAGE code using the CAGE code search feature at *http://www.dlis.dla.mil/cage_welcome.asp.*

4.1704 Solicitation provisions and contract clause.

(a) Use the provision at 52.204–XX, Commercial and Government Entity Code Reporting, in all solicitations, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

(b) Use the provision at 52.204–YY, Ownership or Control of Offeror, in all solicitations, except when—

(1) A condition listed at 4.605(c)(2) applies; and

(2) The acquisition is funded by an agency other than DoD or NASA.

(c) Use the clause at 52.204–ZZ, Commercial and Government Entity Code Maintenance, in all contracts resulting from solicitations containing the provision at 52.204–XX.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.301 by revising paragraph (d) to reads as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) *Other required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(1) Insert the provision at 52.204–XX, Commercial and Government Entity Code Reporting, as prescribed at 4.1704(a).

(2) Insert the clause at 52.204–ZZ, Commercial and Government Entity Code Maintenance, as prescribed at 4.1704(c).

(3) Insert the clause at 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in 25.301–4.

(4) Insert the provision at 52.209–7, Information Regarding Responsibility Matters, as prescribed in 9.104–7(b).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

22.1006 [Amended]

■ 5. Amend section 22.1006 by—

■ a. Removing from paragraph (a)(2)(i)(C) ''52.204–8(c)(2)(iii) or (iv)'' and adding ''52.204–8(c)(2)(iv) or (v)'' in its place;

■ b. Removing from paragraph (e)(2)(i) ''52.204–8(c)(2)(iii)'' and adding ''52.204–8(c)(2)(iv)'' in its place; and

■ c. Removing from paragraph (e)(4)(i) ''52.204–8(c)(2)(iv)'' and adding ''52.204–8(c)(2)(v)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.204–8 by—

■ a. Revising the date of the provision;

■ b. Redesignating paragraphs (c)(2)(i) through (c)(2)(vii) as paragraphs (c)(2)(ii) through (c)(2)(viii), respectively; and

■ c. Adding a new paragraph (c)(2)(i).

The revised and added text reads as follows:

52.204—8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (Date)

* * * * *

(c)(2) * * *

___(i) 52.204–YY, Ownership or Control of Offeror. This provision applies to all solicitations above the micro-purchase threshold, except when a condition listed at 4.605(c)(2) applies.

* * * * *

■ 7. Add section 52.204–XX to read as follows:

52.204–XX Commercial and Government Entity Code Reporting.

As prescribed in 4.1704(a), use the following provision:

Commercial and Government Entity Code Reporting (DATE)

(a) *Definition.* As used in this provision—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) The offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter ''CAGE'' before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via—

(1) Registration in the System for Award Management (SAM) at *www.sam.gov.* If an offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Logistics Information Service will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas must obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) *The DLA Logistics Information Service.* If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at to be determined.

(3) *The appropriate country codification bureau.* Entities located outside the United States and its outlying areas may obtain a NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NAMSA if the foreign entity's country is

not a member of NATO or a sponsored nation. Points of contact for codification bureaus and NAMSA, as well as additional information on obtaining NCAGE codes, are available at *http://www.dlis.dla.mil/Forms/Form_AC135.asp.*

(d) Additional guidance for establishing and maintaining CAGE codes is available at *http://www.dlis.dla.mil/cage_welcome.asp.*

(e) Do not delay submission of the offer pending receipt of a CAGE code.

(End of Provision)

■ 8. Add section 52.204–YY to read as follows:

52.204–YY Ownership or Control of Offeror.

As prescribed in 4.1704(b), use the following provision:

Ownership of Control of Offeror (DATE)

(a) *Definitions.* As used in this provision—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

Highest-level owner means the business entity that owns or controls one or more business entities that own or control the offeror.

Immediate owner means the business entity which has the most direct and proximate ownership or control of the offeror.

Owner means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

(b) The offeror represents that it [_] is or [_] is not owned or controlled as described in ''Owner'' definition in paragraph (a) of this provision.

(c) If the offeror has indicated ''is'' in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code: _____.
Immediate owner legal name: _____.
(Do not use a ''doing business as'' name)

Immediate owner is the same as highest-level owner: [_] Yes or [_] No.

(d) If the offeror has indicated ''no'' in paragraph (c) of this provision, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code: _____.
Highest-level owner legal name: _____.
(Do not use a ''doing business as'' name)

(End of provision)

■ 9. Add section 52.204–ZZ to read as follows:

52.204–ZZ Commercial and Government Entity Code Maintenance.

As prescribed in 4.1704(c), use the following clause:

Commercial and Government Entity Code Maintenance (DATE)

(a) *Definitions.* As used in this clause—

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States and its outlying areas by the Defense Logistics Agency (DLA) Logistics Information Service to identify a commercial or government entity, or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by NATO's Maintenance and Supply Agency (NAMSA) to entities located outside the United States and its outlying areas that DLA Logistics Information Service records and maintains in the CAGE master file. This type of code is known as an NCAGE code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For Contractors registered in the System for Award Management (SAM), the DLA Logistics Information Service shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the Contracting officer in accordance with subpart 42.12. The Contractor shall communicate any change to the CAGE number to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE data on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Logistics Information Service. Requests for changes shall be provided on a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, to the address shown on the back of the DD Form 2051. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States or its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau or NAMSA to request CAGE changes. Points of contact for National Codification Bureaus and NAMSA, as well as additional information on obtaining NCAGE codes, are available at *http://www.dlis.dla.mil/Forms/Form_AC135.asp.*

(e) Additional guidance for maintaining CAGE codes is available at to be determined.

(End of Clause)

■ 10. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from the introductory text of the provision ''ORCA'' and ''through (o)'' and adding ''the System for Award Management (SAM)'' and ''through (p)'' in its place, respectively;

■ c. Amending paragraph (a) by adding, in alphabetical order, the definitions ''Highest-level owner'', ''Immediate owner'', and ''Owner'';

■ d. Removing from paragraph (b)(1) ''Online Representations and Certifications Application (ORCA)'' and adding ''SAM'' in its place;

■ e. Revising paragraph (b)(2);

■ f. Removing from paragraph (c)(10)(i)(A) ''CCR'' and adding ''SAM'' in its place; and

■ g. Removing from paragraph (l) ''a central contractor registration'' and adding ''the SAM'' in its place.

■ h. Adding paragraph (p).

The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (DATE)

(a) * * *

Highest-level owner means the business entity which owns or controls one or more business entities that own or control the offeror.

* * * * *

Immediate owner means the business entity which has the most direct and proximate ownership or control of the offeror.

* * * * *

Owner means the entity, other than the offeror, that is affiliated with the offeror through control of the offeror as described in this definition or, in the case of a small business, as provided in FAR part 19 and 13 CFR part 121. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. The two types of owners are immediate owners and highest-level owners, respectively, and these owners may be the same for some entities. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and the common use of employees.

* * * * *

(b)(1) * * *

(2) The offeror has completed the annual representations and certifications

electronically via the SAM Web site accessed through *https://www.acquisition.gov.* After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs ___.

[Offeror to identify the applicable paragraphs at (c) through (p) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

* * * * *

(p) *Ownership or Control of Offeror.* (Applies in all solicitations, except when a condition listed at 4.605(c)(2) applies and the acquisition is funded by an agency other than DoD or NASA.)

(1) The offeror represents that it [_] is or [_] is not owned or controlled as described in ''Owner'' definition in paragraph (a) of this provision.

(2) If the offeror has indicated ''is'' in paragraph (p)(1) of this section, enter the following information:

Immediate owner CAGE code: _____.
Immediate owner legal name: _____.
(Do not use a ''doing business as'' name)

Immediate owner is the same as highest-level owner: [_] Yes or [_] No.

(3) If the offeror has indicated ''no'' in paragraph (p)(2) of this section, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code: _____.
Highest-level owner legal name: _____.
(Do not use a ''doing business as'' name)

* * * * *

[FR Doc. 2013–09143 Filed 4–17–13; 8:45 am]

BILLING CODE 6820–EP–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834, 1841, 1846, 1851 and 1852

RIN 2700–AE01

NASA FAR Supplement Regulatory Review No. 1

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is updating the NASA FAR Supplement (NFS) with the goal of eliminating unnecessary regulation, streamlining overly burdensome regulation, clarifying language, and simplifying processes where possible. This proposed rule is the first in a series and includes updates and revisions to five NFS parts. On January 18, 2011, President Obama signed Executive Order 13563, Improving Regulations and Regulatory Review, directing agencies to develop a plan for a retrospective analysis of existing regulations. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011.

DATES: Interested parties should submit comments to NASA at the address below on or before June 17, 2013 to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AE01 via the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Leigh Pomponio via email at *leigh.pomponio@NASA.gov.* NASA's full plan can be accessed at: *http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf.*

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, NASA, Office of Procurement, email: *leigh.pomponio@NASA.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The NASA FAR Supplement (NFS) is codified at 48 CFR 1800. Periodically, NASA performs a comprehensive review and analysis of the regulation, makes updates and corrections, and reissues the NASA FAR Supplement. The last reissue was in 2004. The goal of the review and analysis is to reduce regulatory burden where justified and appropriate and make the NFS content and processes more efficient and effective, faster and simpler, in support of NASA's mission. Consistent with Executive Order 13563, Improving Regulations and Regulatory Review, NASA is currently reviewing and revising the NFS with an emphasis on streamlining and reducing burden. Due to the volume of the regulation, the revisions to the regulation will be made in increments. This proposed rule is the first of three expected rules which together will constitute the NFS update and reissue. This rule includes revisions to parts 1834, 1841, 1846, 1851, and 1852 of the NFS. Further, this rule provides notice that no regulatory changes will be made to parts 1814, 1815 (exclusive of subpart 1815.4), 1818, 1822, 1824, and 1843.

NASA analyzed the existing regulation to determine whether any portions should be modified, streamlined, expanded, or repealed. Special emphasis was placed on identifying and eliminating or simplifying overly burdensome processes that could be streamlined without jeopardizing Agency mission effectiveness. Additionally, NASA sought to identify current regulatory coverage that is not regulatory in nature, and to remove or relocate such coverage to internal guidance. In addition to substantive changes, this rule includes administrative changes necessary to make minor corrections and updates. Specifically, the changes in this rule are summarized as follows:

Part 1815: No regulatory changes to Part 15 but note that two corresponding clauses are revised. The pre-proposal clause at 1852.215–77 is revised to add additional information on security information required for attendance at conferences at NASA field locations. The clause entitled Proposal Page Limitations at 1852.215–81 is revised to clarify the maximum acceptable proposal page counts.

Part 1834:

1. Administrative changes are made to policy on Earned Value Management System which correct nomenclature and Web site references.

2. In Notice of Earned Value Management System provision at 1852.234–1, a requirement is added for offerors to provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures; the rule also updates Web site and references in the provision.

3. In Earned Value Management System clause at 1852.234–2, administrative changes are made to correct nomenclature and add a Web site reference.

Part 1841: Subpart 1841.5—Solicitation Provision and Contract Clauses, is deleted in its entirety. Clause text at 1852.241–70, Renewal of Contract, is removed. The prescription and clause are removed because the clause at FAR 52.217–9 is sufficient to provide for a contract extension or renewal. A NASA-unique clause to address extension and renewal in a utility contract is not necessary.

Part 1846:

1. Subpart 1846.6—Material Inspection and Receiving Reports, is revised to align with DFAR Appendix F, facilitating comparison of NASA and DoD practices and procedures with regard to DD Form 250, especially for contractors doing business with both agencies. Administrative changes are also made to this subpart to clarify DD Form 250 preparation instructions.

2. The clause 1852.246–72, Material Inspection and Receiving Report, is revised slightly to clarify distribution requirements.

Part 1851: Section 1851.102–70, Contractor acquisition of filing cabinets, is deleted because it is no longer relevant or necessary.

Part 1852: Changes to clauses are discussed above according to corresponding NFS part.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it mainly clarifies or updates existing regulations. In one instance, it adds new requirements to the Earned Value Management System Clause, but that clause is rarely applicable in contracts with small businesses. In several instances, this rule deletes requirements, but not to the extent that small entities would be significantly impacted.

D. Paperwork Reduction Act

The proposed rule contains a new information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35). The collection is at 1852.215–77(c), Pre-proposal/pre-bid conference, wherein attendees at pre-proposal or pre-bid conferences will be required to submit personal identity information. NASA invites public comments on the following aspects of the proposed rule: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Security Checks for Attendance at Pre-proposal Conferences. NASA FAR Supplement 1852.215–77, Pre-proposal/Pre-bid Conference

Type of Request: New collection.

Number of Respondents: 30.

Responses per Respondent: 12.

Annual Responses: 360.

Average Burden per Response: 0.25 hours.

Annual Burden Hours: 90.

Needs and Uses: This information collection requires contractors to supply personal identity information for attendees at pre-proposal conferences that are held at NASA facilities. The information includes, but is not limited to name, social security number, place of birth, and citizenship. NASA will utilize the information to perform security checks for entrance to NASA facilities. Without the collection of this information, NASA will be unable to permit entrance to NASA facilities for attendance at pre-proposal conferences.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to NASA, Attn: *Leigh Pomponio leigh.pomponio@NASA.gov.* Comments can be received up to 60 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to NASA, Attn: Leigh Pomponio, 300 E Street SW., Washington, DC 20546–0001.

List of Subjects in 48 CFR 1834, 1841, 1846, 1851, and 1852.

Government procurement.

William P. McNally,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1834, 1841, 1846, 1851, and 1852 are proposed to be amended as follows:

PART 1834—MAJOR SYSTEM ACQUISITION

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

Authority: 42 U.S.C. 2473(c)(1).

1834.201 [Amended]

■ 2. Amend section 1834.201 to read as follows:

■ a. Amend paragraph (a) introductory text by removing the word ''acquisitions'' in the first sentence and adding in its place the word ''contracts''.

■ b. Amend paragraph (a)(3) by adding the phrase ''Earned Value Management'' before the acronym EVM and adding parentheses around EVM.

■ c. Amend the first sentence of paragraph (b), by removing the phrase ''earned value management'' with ''EVM'' and adding the phrase ''a schedule management system'' with ''an Integrated Master Schedule (IMS)''.

■ d. Amend paragraph (d) by adding the phrase ''and the applicable NASA Center EVM Focal Point (*http://evm.nasa.gov/council.html*)'' between ''office'' and ''in determining''.

■ e. Amend paragraph (e) by removing ''American National Standards Institute/Electronics Industries Alliance Standard'' and the parentheses around the existing acronym ANSI/EIA.

■ f. Add paragraph (f).

The addition reads as follows:

1834.201 Policy.

* * * * *

(f) As a minimum, and in accordance with NPD 7120.5, requirements initiators shall ensure that EVMS monthly reports are included as a deliverable in the acquisition package provided to the procurement office for implementation into contracts where EVMS applies. Additionally, the acquisition package shall include a Contract Performance Report (CPR), IMS and a Work Breakdown Structure (WBS) and the appropriate data requirements descriptions (DRDs) for implementation into the contract.

1834.203–70 [Amended]

■ 3. Amend section 1834.203–70 by removing ''1834.201(a)(3)'' and adding in its place ''1834.201(c)'' in the first sentence.

PART 1841—ACQUISITION OF UTILITY SERVICES

■ 4. The authority citation for this section continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1841.5 [Removed and Reserved].

■ 5. Remove and reserve Subpart 1841.5.

PART 1846—QUALITY ASSURANCE

■ 6. The authority citation continues to read as follows:

Authority: U.S.C. 2473(c)(1).

■ 7. Add Subpart 1846.1 to read as follows:

Subpart—1846.1 General

1846.101 Definitions.

''Counterfeit goods'' means an item that is an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source.

''Legally authorized source'' means the current design activity or the original manufacturer or a supplier authorized by the current design activity or the original manufacturer to produce an item.

1846.102 Policy.

(f) See NPR 8735.2, Section 2.1, concerning quality assurance for critical acquisition items. Generally, the quality assurance requirements set forth in the NPR for critical acquisition items are not allowed under Part 12 procedures. See FAR 12.208.

■ 8. Section 1846.670–1 is revised to read as follows:

1846.670–1 General.

This subpart contains procedures and instructions for use of the DD Form 250, Material Inspection and Receiving Report (MIRR), (DD Form 250 series equivalents, and commercial shipping/packing lists used to document Government contract quality assurance (CQA).

■ 9. Section 1846.670–2 is revised to read as follows:

1846.670–2 Applicability.

(a) This subpart applies to supplies or services acquired by or for NASA when the clause at 1852.246–72, Material Inspection and Receiving Report, is included in the contract.

■ 10. Section 1846.670–3 is revised to read as follows:

1846.670–3 Use.

(a) The DD Form 250 is a multipurpose report used for—

(1) Providing evidence of CQA at origin or destination;

(2) Providing evidence of acceptance at origin or destination;

(3) Packing lists;

(4) Receiving;

(5) Shipping; and

(6) Contractor invoice support.

(b) Do not use MIRRs for shipments—

(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or,

(2) Of contract inventory.

(c) The contractor prepares the DD Form 250, except for entries that an authorized Government representative is required to complete. The contractor shall furnish sufficient copies of the completed form, as directed by the Government Representative.

■ 11. Section 1846.670–5 is revised to read as follows:

1846.670–5 Forms.

An electronic copy of the DD Form 250 may be downloaded from the General Services Administration's Forms Library at *http://www.gsa.gov/portal/category/100000.*

■ 12. In 1846.672–1, paragraphs (a)(1), (b), and (c) are revised to read as follows:

1846.672–1 Preparation Instructions.

* * * * *

(1) Dates shall include nine spaces consisting of the four digits of the year, the first three letters of the month, and two digits for the date (e.g., 2012SEP24).

* * * * *

(b) *Classified information.* Do not include classified information on the MIRR. MIRRs must not be classified.

(c) *Block 1—PROCUREMENT INSTRUMENT IDENTIFICATION (CONTRACT NUMBER)* Enter the ten-character, alpha-numeric procurement identifier of the contract.

* * * * *

(h) *Block 6—INVOICE.*

The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is estimated, enter an ''E'' after the date. Do not correct MIRRs to reflect the actual date of invoice submission.

* * *

(j) *Block 8—ACCEPTANCE POINT.* Enter an ''S'' for origin or ''D'' for destination as specified in the contract as the point of acceptance.

(k) *Block 9—PRIME CONTRACTOR.* Enter the Commercial and Government Entity (CAGE) code and address.

* * *

In section 1846.672, the first sentence of paragraph (r)(1)(i) is amended by removing the phrase ''Federal'' and adding its place the phrase ''national'' and removing the phrase ''(FSN)'' and adding in its place the phrase ''(NSN)''.

j. In section 1846.672, paragraph (r)(3) is revised by replacing ''Command'' with ''Agency''.

k. In section 1846.672, paragraph (r)(4)(ii) is revised by replacing ''FSN'' with ''NSN''.

l. In section 1846.672, paragraph (r)(4)(v) is revised by replacing ''FSN'' with ''NSN''.

m. In section 1846.672, paragraph (r)(4)(xi) is revised by replacing ''shall'' with ''will''.

* * * * *

1846.672–5 [Removed]

■ 13. Section 1846.672–5 is removed.

1846.672–6 and 1846.672–7 [Redesignated as 1846.672–5 and 1846.672–6]

Sections 1846.672–6 and 1846.672–7 are redesignated as 1846.672–5 and 1846.672–6.

■ 14. Section 1846.674 is revised to read as follows:

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246–72, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced. The clause is not required for—

(1) Contracts awarded using simplified acquisition procedures;

(2) Negotiated subsistence contracts; or

(3) Contracts for which the deliverable is a scientific or technical report. Insert number of copies and distribution instructions in paragraph (a).

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 15. The authority citation continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

1851.102–70 [Removed and Reserved]

■ 16. Remove and reserve section 1851.102–70.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 17. The authority citation continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

■ 18. Section 1852.215.77 is amended by adding paragraphs (c), (d), and (e) to read as follows:

1852.215–77 Preproposal/Pre-Bid Conference.

* * * * *

PRE–PROPOSAL/PRE–BID CONFERENCE [XX/XX]

* * * * *

(c) Offerors, individuals, or interested parties who plan to attend the pre-proposal/pre-bid conference must provide the Contracting Officer in writing, at a minimum, full name of the attendee(s), identification of nationality (U.S. or specify other nation citizenship), Lawful Permanent Resident Numbers in the case of foreign nationals, affiliation and full office address/phone number. Center-specific security requirements for this pre-proposal/pre-bid conference will be given to a company representative prior to the conference or will be identified in this solicitation as follows: (*fill-in*). Examples of specific identification information which may be required include state driver's license and social security number. Except for foreign nationals, the identification information must be provided at least (*fill-in*) working days in advance of the conference. This information shall be provided at least (*fill-in*) working days in advance of the conference for foreign nationals due to the longer badging and clearance processing time required. However, the Center reserves the right to determine foreign nationals may not be allowed on the Government site. The Government is not responsible for offerors' inability to obtain clearance within sufficient time to attend the conference. Due to space limitations, representation of any potential Offeror may not exceed (*fill-in)* company representatives/persons per Offeror. Any ''lobbying firm or lobbyist'' as defined in 2 U.S.C. 1602(9) and (10), or any Offeror represented by a lobbyist under the Lobbying Disclosure Act of 1995 shall be specifically identified.

(d) Visitors on NASA Centers are allowed to possess and use photographic equipment (including camera cell phones) and related materials EXCEPT IN CONTROLLED AREAS. Anyone desiring to use camera equipment during the conference should contact the Contracting Officer to determine if the site(s) to be visited is a controlled area.

(e) The Government will respond to questions regarding this procurement provided such questions have been received at least five (5) working days prior to the conference. Other questions will be answered at the conference or in writing at a later time. All questions, together with the Government's response, will be transmitted to all solicitation recipients via the government-wide point of entry (GPE). In addition, conference materials distributed at the preproposal/pre-bid conference will be made available to all potential offerors via the GPE using the NAIS Electronic Posting System.

(End of provision)

■ 19 Section 1852.215–81 is amended by:

■ a. Paragraph (a) is amended by removing the chart and replacing it to read;

■ b. Paragraph (b) is amended by adding a sentence at the end of the paragraph.

■ c. Paragraph (c) is revised.

The revisions read as follows:

1852.215–81 Proposal Page Limitations.

(a) * * *

Proposal section (List each volume or section)	Page limit (Specify limit)	[Proposal subsection (List each subsection
		(e.g. Offeror's Subcontracting Plan should not exceed 20 pages)

(b) * * * Other limitations/instructions identified as follows: (*fill-in,* if there are other limitations/instructions).

(c) Identify any exclusions to the page limits that are excluded from the page counts specified in paragraph (a) of this provision (e.g. title pages, table of contents) as follows: (*fill-in*). In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(End of provision)

■ 20. Section 1852.234–1 is amended as follows:

■ a. Paragraph (a) is amended by adding the phrase ''(current version at time of solicitation).'' After the word ''Systems'' at the end of the paragraph.

■ b. Paragraph (b)(1)(iii) and paragraph (b)(1)(vii).

The revisions read as follows:

1852.234–1 Notice of Earned Value Management System.

(b) * * *

(1) * * *

(iii) Provide a matrix that correlates each guideline in ANSI/EIA 748 (current version at time of solicitation) to the corresponding process in the offeror's written management procedures;

* * * * *

(vii) If the value of the offeror's proposal, including options, is $50 million or more, provide a schedule of events leading up to formal validation and Government acceptance of the Contractor's EVMS. Guidance can be found in the Department of Defense Earned Value Management Implementation Guide (*https://acc.dau.mil/CommunityBrowser.aspx?id=19557*) as well as in the National Defense Industrial Association (NDIA) Earned Value Management Systems Acceptance Guide (*http://www.ndia.org/divisions/divisions/procurement/pages/programsystemcommittee.aspx*).

* * * * *

■ 21. Section 1852.234–2 is amended as follows:

■ a. By revising paragraph (a)(2) ;

■ b. The first sentence in paragraph (b) is amended by removing the phrase ''cost/schedule control system'' and adding ''EVMS'' in its place;

■ c. Paragraph (c) is amended by adding the sentence ''See the NASA IBR Handbook (*http://evm.nasa.gov/handbooks.html*) for guidance.'' at the end of the paragraph:

The revisions read as follows:

1852.234–2 Earned Value Management System.

(a) * * *

(2) Earned Value Management (EVM) procedures that provide for generation of timely, accurate, reliable, and traceable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the data requirements descriptions in the contract.

* * * * *

1852.241–70 [Removed and Reserved]

■ 22. Remove and reserve section t 1852.241–70.

■ 23. In § 1852.246–72, Material Inspection and Receiving Report, paragraph (a) is revised to read as follows:

1852.246–72 Material Inspection and Receiving Report.

* * * * *

(a) At the time of each delivery to the Government under this contract, the Contractor shall prepare and furnish a Material Inspection and Receiving Report (DD Form 250 series). The form(s) shall be prepared and distributed as follows:

(Insert number of copies and distribution instructions.)

* * * * *

[FR Doc. 2013–06441 Filed 4–17–13; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register

Vol. 78, No. 75

Thursday, April 18, 2013

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Altered system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to alter a system of records maintained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, entitled ''USAID–09, Criminal Law Enforcement Records System''. USAID is updating this system of record for a non-significant change, to reflect the address change for the location of the system. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 522a(e)(4)).

DATES: The 30-day public comment period and 10-day additional OMB and Congress review period is not required for non-significant alterations.

ADDRESSES: You may submit comments:

Paper Comments

- *Fax:* (703) 666–5670.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

Electronic Comments

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Email: privacy@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact, USAID Privacy Office, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202. Email: *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: The Criminal Law Enforcement Records System, will now be electronically stored and located in a new location. The new location is: Terremark NAP of the Americas, 2 S Biscayne Blvd., Miami, FL 33131.

Dated: March 15, 2013.

William Morgan,

Chief Information Security Officer—Chief Privacy Officer.

USAID–09

SYSTEM NAME:

Criminal Law Enforcement Records System

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Terremark NAP of the Americas, 2 S Biscayne Blvd., Miami, FL 33131.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, OIG maintains records in its Criminal law Enforcement Records System on the following categories of individuals insofar as they are relevant to any investigation or preliminary inquiry undertaken to determine whether to commence an investigation: complainants; witnesses; confidential and non-confidential informants; contractors; subcontractors; recipients of federal assistance or funds and their contractors/subcontractors and employees; individuals threatening USAID employees or the USAID Administrator; current, former, and prospective employees of USAID; alleged violators of USAID rules and regulations; union officials; individuals investigated and/or interviewed; persons suspected of violations of administrative, civil, and/or criminal provisions; grantees,' sub-grantees; lessees; licensees; and other persons engaged in official business with USAID.

CATEGORIES OF RECORDS COVERED BY THIS SYSTEM:

The system contains investigative reports and materials gathered or created with regard to investigations of administrative, civil, and criminal matters by OIG and other Federal, State, local, tribal, territorial, or foreign regulatory or law enforcement agencies. Categories of records may include: complaints; request to investigate; information contained in criminal, civil, or administrative referrals; statements from subjects, targets, and/or witnesses; affidavits, transcripts, police reports, photographs, and/or documents relative to a subject's prior criminal record; medical records, accident reports, materials and intelligence information from other governmental investigatory or law enforcement organizations; information relative to the status of a particular complaint or investigation, including any determination relative to criminal prosecution, civil, or administrative action; general case management documentation' subpoenas and evidence obtained in response to subpoenas; evidence logs; pen registers; correspondence, records of seized property' reports of laboratory examination; reports of investigation; and other data or evidence collected or generated by OIG's Office of Investigations during the course of conducting its official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App. 3, as amended.

PURPOSE(S):

The records contained in this system are used by OIG to carry out its statutory responsibilities under the Inspector General Act of 1978, as amended, to conduct and supervise investigations relating to programs and operations of USAID; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud, waste, and abuse in such programs and operations. The records are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts, and in conducting related criminal prosecutions, civil proceedings, and administrative actions.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

USAID's routine uses, see 42 FR 47371 (September 20, 1977) and 59 FR 52954 (October 20, 1994), apply to this system of records. As additional routine uses for this records system, USAID/OIG may disclose information in this system as follows:

(a) Disclosure to the Department of Justice (DOJ) or a legal representative designated by a Federal Agency in circumstances in which:

(1) USAID or OIG, or any component thereof:

(2) Any employee of USAID or OIG in his or her official capacity;

(3) Any employee of USAID or OIG in his or her individual capacity, where the DOJ has agreed to represent or is considering a request to represent the employee; or

(4) The United States or any of its components is a party to pending or potential litigation or has an interest in such litigation, USAID or OIG will be affected by the litigation, or USAID or OIG determines that the use of such records by the DOJ is relevant and necessary to the litigation; provided, however, that in each case, USAID or OIG determines that disclosure of the records to the DOJ is a use of the information that is compatible with the purpose for which the records were collected.

(b) Disclosure to any source from which additional information is requested in order to obtain information relevant to:

(1) A decision by either USAID or OIG concerning the hiring, assignment, or retention of an individual or other personnel action;

(2) The issuance, renewal, retention, or revocation of a security clearance;

(3) The execution of a security or suitability investigation;

(4) The letting of a contract; or

(5) The issuance, retention, or revocation of a license, grant, award, contract, or other benefit to the extent the information is relevant and necessary to a decision by USAID or OIG on the matter.

(c) Disclosure to a Federal, State, local, foreign, tribal, territorial, or other public authority in response to its request in connection with:

(1) The hiring, assignment, or retention, of an individual;

(2) The issuance, renewal, retention or revocation of a security clearance;

(3) The execution of a security or suitability investigation;

(4) The letting of a contract; or

(5) The issuance, retention, or revocation of a license, grant, award, contract, or other benefit conferred by that entity to the extent that the information is relevant and necessary to the requesting entity's decision on the matter.

(d) Disclosure in the event that a record, either by itself or in combination with other information, indicates a violation or a potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program stature, or by regulation, rule, or order issued pursuant thereto; or a violation or potential violation of a contract provision. In these circumstances, the relevant records in the system may be referred, as a routine use, to the appropriate entity, whether Federal, State, tribal, territorial, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, order or contract.

(e) Disclosure to any source from which additional information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation, audit, or evaluation.

(f) Disclosure to a foreign government pursuant to an international treaty, convention, or executive agreement entered into by the United States.

(g) Disclosure to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job or other activity for USAID or OIG, who have a need to access the information in the performance of their duties or activities. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

(h) Disclosure to representatives of the Office of Personnel Management, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with administrative grievances, complaints, claims, or appeals filed by an employee, and such other functions promulgated in 5 U.S.C. 1205–06.

(i) Disclosure to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

(j) Disclosure in response to a facially valid subpoena for the record.

(k) Disclosure to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904, 2906.

(l) Disclosure to the Departments of the Treasury and Justice in circumstances in which OIG seeks to obtain, or has in fact obtained, and ex parte court order to obtain tax return information from the Internal Revenue Service.

(m) Disclosure to any Federal official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations for purposed of reporting to the President and Congress on the activities of OIF as contemplated by the Homeland Security Act of 2002 (Pub. L. 107–296; November 25, 2002). This disclosure category includes other Federal offices of inspectors general and members of the President's Council on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of DOJ and its component, the Federal Bureau of Investigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and all other media (photographs, audio recordings, diskettes, CD's etc) are stored in GSA-approved security containers with combination locks in a secured area. Electronic records are password protected and maintained on a file server in locked facilities that are secured at all times by security systems and video surveillance cameras.

RETRIEVABILITY:

Records are retrieved in a database by name and or alias, as well as by non-personally identifiable information, such as case number.

SAFEGUARDS:

Access to paper records is restricted to authorized OIG employees on a need-to-know basis. At all times, paper records are maintained in locked safes in a secured area in offices that are occupied by authorized OIG employees. Access to electronic records is restricted to authorized OIG staff members on a need-to-know basis. Each person granted access to the system must be individually authorized to use the system.

Disclosure of records maintained electronically is restricted through the use of passwords. The computer servers in which records are stored are password protected. Passwords are changed on a cyclical basis. The computer servers are located in locked facilities that are secured at all times by security systems and video surveillance cameras. The security systems provide immediate notification of any attempted intrusion to USAID Security personnel. All data exchanged between the servers and individual computers is encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained for two or five years after the investigation is closed. If an investigation does not involve allegations against a senior level USAID employee, is not of congressional interest, or does not yield a reportable result, the records within the closed case file are maintained for a period of two years from the date of closing by OIG. If the investigation yields a reportable result, has congressional interest, or involves allegations against a senior level USAID employee, the records within the closed case file will be retained for five years from the date of closing by OIG. After the applicable period (two or five years), closed investigative files will be sent from USAID, Office of Inspector General, 1300 Pennsylvania Ave. NW., Washington, DC 20523, to the Washington National Records Center in Suitland, Maryland, where they will be retained for fifteen years, and subsequently destroyed. Any electronic file that qualifies as a record will be printed out and treated as a hard-copy record for disposition purposes.

NOTIFICATION PROCEDURES:

Records in this system are exempt from notification, access, and amendment procedure in accordance with subsections (j) and (k) of 5 U.S.C. 552a, and 22 CFR 215.13 and 215.14. Individuals requesting notification of the existence of records on themselves should send their request to the System Manager (see information above). The request must be in writing and include the requester's full name, his or her current address, his or her date and place of birth, and a return address for transmitting the information. The request shall be signed by either notarized signature or by signature under penalty of perjury. Requesters shall also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to a record on himself or herself must submit the request in writing according to the ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself must identify the information to be changed and the corrective action sought. Requests must follow the ''Notification Procedures'' above.

RECORD SOURCE CATEGORY:

OIG collects information from a wide variety of sources, including information from USAID and other Federal, State and local agencies, subjects, witnesses, complainants, confidential and/or non-confidential sources, and other nongovernmental entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under the specific authority provided by subsection (j)(2) of 5 U.S.C. 552a, USAID has adopted regulations, 22 CFR 215.13 and 215.14, which exempt this system from the notice, access, and amendment requirements of 5 U.S.C. 552a, except subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i). If the provision found at subsection (j)(2) of 5 U.S.C. 552a is held to be invalid, then, under subsections (k)(1) and (2) of 5 U.S.C. 552a, this system is determined to be exempt from the provisions of subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a. See 57 FR 38276, 38280–81 (August 24, 1992). The reasons for adoption of 22 CFR 215.13 and 215.14 are to protect the materials required by Executive order to be kept secret in the interest of national defense of foreign policy, to maintain the integrity of the law enforcement process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosures of investigative techniques, to maintain the ability to obtain necessary information, to prevent subjects of investigation from frustrating the investigatory process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary basis of possible enforcement actions, to fulfill commitments made to sources to protect their identities and the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

Meredith Snee,

Privacy Analyst.

[FR Doc. 2013–09103 Filed 4–17–13; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Council for Native American Farming and Ranching

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of The Council for Native American Farming and Ranching (CNAFR) a public advisory committee of the Office of Tribal Relations (OTR). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This will be the third meeting of the CNAFR and will consist of, but not limited to: hearing public comments; update of USDA programs and activities; discussion of committee priorities. This meeting will be open to the public.

DATES: The meeting will be held on May 3, 2013 from 1 p.m. to 5 p.m. EST. The meeting will be open to the public. Note that a period for public comment will be held on May 3, 2013 4:00 p.m. to 5:00 p.m. EST

ADDRESSES: The meeting will be conducted using webinar and teleconference technology. This will not be an in-person meeting. Webinar and teleconference access information for the meeting will be posted to the OTR Web site at *www.usda.gov/tribalrelations*.

Written Comments: Written comments may be submitted to: John Lowery, Tribal Relations Manager, Office of Tribal Relations (OTR), 1400 Independence Ave. SW., Whitten Bldg., 500–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *John.Lowery@osec.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to John Lowery, Tribal Relations Manager, OTR, 1400 Independence Ave. SW., Whitten Bldg., 500A, Washington, DC 20250; by Fax: (202) 720–1058 or email: *John.Lowery@osec.usda.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. 2), USDA established an advisory council for Native American farmers and ranchers. The CNAFR is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the settlement agreement in *Keepseagle* v. *Vilsack* that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The CNAFR will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the CNAFR is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; (2) to transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created through the farm loan program through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned purposes. Equal opportunity practices were considered in all appointments to the CNAFR in accordance with USDA policies. The Secretary selected the members in May 2012. Interested persons may present views, orally or in writing, on issues relating to agenda topics before the CNAFR.

Written submissions may be submitted to the contact person on or before April 26, 2013. Oral presentations from the public will be scheduled between approximately 4:00 p.m. to 5:00 p.m. on May 3, 2013. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants by April 26, 2013. All oral presentations will be given three (3) to five (5) minutes depending on the number of participants.

OTR will also make all agenda topics available to the public via the OTR Web site: *http://www.usda.gov/tribalrelations* no later than 10 business days before the meeting and at the meeting. In addition, the minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR 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 John Lowery, at least 10 business days in advance of the meeting.

Dated: April 4, 2013.

Max Finberg,

Acting Director, Office of Tribal Relations.

[FR Doc. 2013–09051 Filed 4–17–13; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0020]

Availability of an Environmental Assessment for Field Testing of a Yersinia Pestis Vaccine, Live Raccoon Poxvirus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Yersinia Pestis Vaccine, Live Raccoon Poxvirus Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine and related information, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before May 20, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0020-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0020, 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-2013-0020* 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) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Using the risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: U.S. Geological Survey, National Wildlife Health Center.

Product: Yersinia Pestis Vaccine, Live Raccoon Poxvirus Vector.

Possible Field Test Locations: Arizona, Colorado, Montana, New Mexico, South Dakota, Texas, Utah, and Wyoming.

The above-mentioned product consists of a live recombinant raccoon poxvirus vector expressing two *Yersinia pestis* proteins. The vaccine is for the oral vaccination of certain wildlife species, specifically free-ranging prairie dogs, as an aid in the prevention and control of sylvatic plague.

The EA 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).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 15th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–09144 Filed 4–17–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0053]

Importation of Fresh Oranges and Tangerines From Egypt Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest list associated with oranges and tangerines from Egypt that identifies pests of concern. Subsequently, we prepared a commodity import evaluation document to determine the risk posed by peach fruit fly in oranges and tangerines from Egypt. Based on that evaluation, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the pest risk. In addition, we are advising the public that we have prepared a treatment evaluation document that describes a new treatment schedule that can be used to neutralize peach fruit fly and Mediterranean fruit fly in oranges and tangerines. We are making the pest list, commodity import evaluation document, and treatment evaluation document available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 17, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0053-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0053, 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–2012–0053* 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: Mr. Tony Romàn, Import Specialist, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

Oranges (*Citrus sinensis*) from Egypt were approved to be imported into the United States in 1969, subject to cold treatment for Mediterranean fruit fly (*Ceratitis capitata*); however, imports of oranges from Egypt were suspended in July 2002 due to the establishment of peach fruit fly (*Bactrocera zonata*), which is also a pest of citrus in Egypt. Currently, the importation of fresh oranges and tangerines (*Citris reticulata*) from Egypt is not authorized. We received a request from the national plant protection organization (NPPO) of Egypt to consider the use of cold treatment to mitigate for peach fruit fly in oranges and tangerines (including mandarins and clementines) based on new treatment data the NPPO developed. We determined that cold treatment can be effective for this pest.

Because of the time that had passed since importation of oranges from Egypt was suspended, APHIS prepared a pest list to identify pests of quarantine significance that could follow the pathway of importation of oranges and tangerines from Egypt. Based on the pest list, we then completed a commodity import evaluation document (CIED) to identify phytosanitary measures that could be applied to mitigate the risks of introducing or disseminating the identified pests via the importation of oranges and tangerines from Egypt. We have concluded that fresh oranges and tangerines can safely be imported into the United States from Egypt using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). These measures are:

- The oranges and tangerines must be treated in accordance with 7 CFR part 305 for *C. capitata* and *B. zonata;* and
- The oranges and tangerines must be accompanied by a phytosanitary certificate issued by the NPPO of Egypt stating that the consignment has begun or has undergone treatment for *C. capitata* and *B. zonata* in accordance with 7 CFR part 305, with an additional declaration stating that the fruit in the consignment was inspected and found free of *B. zonata.*

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest list and CIED for public review and comment. The pest list and CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may also request paper copies of the pest list and CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh oranges and tangerines from Egypt in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh oranges and tangerines from Egypt into the United States subject to the requirements specified in the CIED.

New Treatment

The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III set out standards for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

In § 305.2, paragraph (b) states that approved treatment schedules are set out in the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (a) sets out the process for adding, revising, or removing treatment schedules when there is no immediate need to make a change.

The PPQ Treatment Manual does not currently provide a treatment schedule for *B. zonata* in oranges and tangerines. In accordance with § 305.3(a)(1), we are providing notice of a new cold treatment schedule T107–l that we have determined is effective against *B. zonata* in oranges and tangerines.

In addition to *B. zonata, C. capitata* (Medfly) is another pest of concern in oranges originating from Egypt. The new cold treatment schedule T107–l is more stringent than the old treatment schedule approved for *C. capitata* in oranges and tangerines, T107–a, and therefore we have determined that the new cold treatment schedule is also adequate to mitigate risks from *C. capitata.*

The reasons for these determinations are described in a treatment evaluation document (TED) we have prepared to support this action. The TED may be viewed on the Regulations.gov Web site or in our reading room. You may also request paper copies of the TED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

After reviewing the comments we receive, we will announce our decision regarding the changes to the PPQ Treatment Manual that are described in the TED in a subsequent notice. If our determination that it is necessary to add new treatment schedule T107–1 remains unchanged following our consideration of the comments, then we will make available a new version of the PPQ Treatment Manual that reflects the addition of T107–l.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 15th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–09146 Filed 4–17–13; 8:45 am]

BILLING CODE 3410–34–P

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0072]

Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis; Notice of Addition of Taxa of Plants for Planting To List of Taxa Whose Importation Is Not Authorized Pending Pest Risk Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are adding 31 taxa of plants for planting that are quarantine pests and 107 taxa of plants for planting that are hosts of 13 quarantine pests to our lists of taxa of plants for planting whose importation is not authorized pending pest risk analysis. A previous notice made data sheets that detailed the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of quarantine pests available to the public for review and comment. This notice responds to the comments we received and makes available final versions of the data sheets, with changes in response to comments.

DATES: *Effective Date:* May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Tschanz, Senior Regulatory Policy Specialist, Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Plants for Planting'' (7 CFR 319.37 through 319.37–14, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of plants for planting (including living plants, plant parts, seeds, and plant cuttings) to prevent the introduction of quarantine pests into the United States. *Quarantine pest* is defined in § 319.37–1 as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

In a final rule published in the **Federal Register** on May 27, 2011 (76 FR 31172–31210, Docket No. APHIS–2006–0011), and effective on June 27, 2011, we established in § 319.37–2a a new category of plants for planting whose importation is not authorized pending pest risk analysis (NAPPRA) in order to prevent the introduction of quarantine pests into the United States. The final rule established two lists of taxa whose importation is NAPPRA: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. For taxa of plants for planting that have been determined to be quarantine pests, the list will include the names of the taxa. For taxa of plants for planting that are hosts of quarantine pests, the list will include the names of the taxa, the foreign places from which the taxa's importation is not authorized, and the quarantine pests of concern. The final rule did not add any taxa to the NAPPRA lists.

Paragraph (b) of § 319.37–2a describes the process for adding taxa to the NAPPRA lists. In accordance with that process, we published a notice [1] in the **Federal Register** on July 26, 2011 (76 FR 44572–44573, Docket No. APHIS–2011–0072) that announced our determination that 41 taxa of plants for planting are quarantine pests and 107 taxa of plants for planting are hosts of 13 quarantine pests. That notice also made available data sheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of a quarantine pest.

We solicited comments concerning the notice and the data sheets for 60 days ending September 26, 2011. We reopened and extended the deadline for comments until November 25, 2011, in a document published in the **Federal Register** on October 25, 2011 (76 FR 66033). We received 37 comments by that date. They were from producers, importers, researchers, and representatives of State and foreign governments. They are discussed below by topic.

General Comments

Effective Date and Federal Orders

The July 26, 2011, notice indicated that we would consider comments and announce whether the taxa identified in the data sheets would be added to the NAPPRA lists in a subsequent notice.

One commenter stated that, due to the risk of importing quarantine pests after the initial notice is published, plants that we determine to be quarantine pests or hosts of quarantine pests should be added to the NAPPRA list at the same time as we publish the notice making available the data sheets supporting that determination. The notice could have a public comment period allowing for changes to the initial list of taxa.

Another commenter disagreed, stating that APHIS must often make regulatory decisions on the basis of incomplete information, and a reasonable comment period prior to action allows other interested parties the opportunity to present valid information and perspectives that will help APHIS to ''get it right.'' This commenter stated that APHIS always has the ability to issue emergency prohibitions or restrictions, should the situation warrant them.

We agree with the second commenter. As described in the May 2011 final rule establishing the NAPPRA category, when we find evidence that the importation of a taxon of plants for planting that is currently being imported poses a risk of introducing a quarantine pest, we restrict or prohibit its importation through the issuance of a Federal import quarantine order, also referred to as a Federal order. For other taxa, we will issue a notice through the NAPPRA process.

One commenter expressed concern that the 60-day comment period on the initial notice and subsequent decisionmaking period may create something of a ''gold rush'' effect in which importers are forewarned to import numerous specimens of risky species before APHIS blocks further imports. The commenter stated that the May 2011 final rule did not fully address this risk. The commenter recommended we address this risk by making liberal use of immediate prohibition orders for the riskiest species, such as was done in the May 30, 2008, Federal order that prohibited imports of *Lygodium microphyllum* and *L. flexuosum,*[2] and ensure a rapid decisionmaking period after the close of the comment period, to provide the speedy protections the nation needs to prevent new plant invasions.

We will issue a Federal order prohibiting the importation of a taxon of plants for planting that is currently being imported whenever we determine it to be necessary to prevent the introduction of a quarantine pest. We will also strive to ensure that we complete our decisionmaking quickly after the comment period has ended. However, we will continue to monitor imports of taxa that we have proposed to add to NAPPRA; if a ''gold rush'' effect occurs for any of them, we have the option to issue a Federal order.

One commenter asked about the relationship between Federal orders and the NAPPRA category. The commenter perceived some inconsistencies. For example:

• Exemptions for specific host plant material types (e.g., plant size, cuttings, etc.) outlined in Federal orders are inconsistent with NAPPRA.

• Exemptions for specific origins (i.e., pest not present/known to occur in specified origin) outlined in Federal orders are inconsistent with NAPPRA.

The importation of taxa that are hosts of several of the quarantine pests described in our data sheets has been subject to Federal orders. In the July 2011 notice, we took comment on their addition to the NAPPRA category. This is consistent with our overall plan for the relationship between Federal orders and NAPPRA.

If a taxon of plants for planting is currently being imported and we determine that the taxon should be added to the NAPPRA category because it is a host of a quarantine pest, we will issue a Federal order to restrict or prohibit its importation. We will also publish a notice announcing our determination that the taxon is a host of a quarantine pest and making available a data sheet that details the scientific evidence that we evaluated in making our determination, including references for that scientific evidence. We will solicit comments from the public. If comments present information that leads us to determine that the importation of the taxon does not pose a risk of introducing a quarantine pest into the United States, APHIS will rescind the Federal order and not add the taxon to the NAPPRA list.

As noted in the July 2011 notice, in a few cases, taxa that are listed as NAPPRA from most countries will be allowed to be imported from countries that are currently exporting the taxa to the United States, subject to restrictions in a Federal order that was issued previously. We would continue to allow such importation based on our experience with importing those taxa of plants for planting and our findings, through inspection, that they are generally pest-free, and based on our determination that the restrictions in the Federal order are sufficient to mitigate the risk associated with the quarantine pest in question. Each data sheet we made available with the July 2011 notice included an ''Action under NAPPRA'' section describing the specific taxa and countries that would be added to NAPPRA. These sections

[1] To view the notice, the data sheets, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0072.*

[2] See *http://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/federalorder-lygodiums.pdf.*

reflected our policy with respect to current importation under Federal orders, and the final versions of the data sheets published along with this notice continue to do so.

With respect to host plant material types, the NAPPRA category does not allow for exceptions for host material types except for seed. Plant type-specific restrictions are discussed further later in this document under the heading ''Hosts of Quarantine Pests.''

With respect to the origin of imports, the Federal order is specifically designed to address current trade; the NAPPRA category is designed to prevent the importation of a taxon from anywhere in the world until we can conduct a pest risk analysis (PRA) to determine what risks may be associated with the importation of the taxon and what means may be available to mitigate those risks.

The commenter also asked how we will ensure cohesion and consistency between the Federal orders and the NAPPRA list of plants, e.g., will the Federal orders be updated to reflect the new NAPPRA list.

If a taxon of plants for planting is on the NAPPRA list for a given country, we would no longer need to include it in a Federal order for that country, and would update the Federal order accordingly. We are doing just that with the pests that have been subject to Federal orders and that are being addressed by this action. The updated Federal orders will note that the importation of the taxa from some countries is not allowed under NAPPRA.

Pests for Consideration

Some commenters suggested pests for consideration for future addition to the NAPPRA lists. We are considering those taxa for addition to NAPPRA. Interested members of the public can also submit suggestions for additions to the NAPPRA lists at *http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37/nappra/suggestions.shtml.*

Future Regulatory Changes

One commenter described the goal of the NAPPRA category as responding more swiftly and effectively to prevent the introduction of specific quarantine pests from established trading partners. In that case, the commenter stated, APHIS should be prepared to remove a plant taxon from NAPPRA if presented with a mitigation proposal that addresses the quarantine pest(s) for which APHIS justified the NAPPRA listing in the first place.

The commenter urged APHIS to concurrently implement two other components of the overhaul of our regulations on the importation of plants for planting. First, APHIS should overhaul the permit system to allow for swift, legal importation of limited quantities of germplasm that is restricted under NAPPRA for research, development, and new variety introduction, subject to appropriate safeguards and oversight.

Secondly, the commenter urged APHIS to establish the regulatory framework for implementing integrated measures programs, widely known and referred to as systems approaches. The commenter stated that integrated measures approaches offer the promise of mitigating the risk of various pests of regulatory concern, and, as NAPPRA is implemented, such approaches can and should serve as a mechanism for facilitating trade in plants that may be restricted under NAPPRA as hosts of quarantine pests. The commenter also stated that implementation of those systems approaches should not necessarily require a full PRA, although in some cases it may.

The commenter expressed concern that restriction of horticulturally significant plant taxa under NAPPRA without concurrent attention to the controlled import permit (CIP) and integrated measures regulatory strategies will discourage compliant trade and encourage unauthorized importation and could also subject APHIS to challenge under international trade agreements. By contrast, concurrent implementation of those rules could address the concerns one commenter expressed that proposals to restrict plants as NAPPRA may create something of a ''gold rush mentality'' in which various interests rush to import them in advance of restrictions taking effect.

We agree with the commenter regarding the importance of these regulatory strategies. As the commenter noted, we published a proposed rule to establish CIPs in the **Federal Register** on October 25, 2011 (76 FR 65976–65985, Docket No. APHIS–2008–0055).[3] We are considering the comments we received on that proposal.

We are also developing a proposed rule to reorganize the plants for planting regulations and to establish a framework for integrated measures programs. The framework will be based on Regional Standard for Phytosanitary Measures (RSPM) No. 24 [4] of the North American Plant Protection Organization, of which APHIS is a member. The framework will also be consistent with the recently developed International Plant Protection Convention (IPPC) standard for plants for planting.[5] It is our hope that there is sufficient interest in the industry in developing functional integrated measures for broad categories of pests (insects, fungi, bacteria, etc.) that we will be able to use these integrated measures to facilitate trade in the manner the commenter describes.

We are adding taxa to the NAPPRA category before finalizing the CIP proposal and the integrated measures proposal because it is necessary to protect U.S. agricultural and environmental resources against the introduction of the quarantine pests identified and described in our data sheets. However, it is our intention that the two rules will provide increased flexibility to safely import NAPPRA-listed taxa in the manner the commenter describes. In the meantime, limited quantities of plant taxa on the NAPPRA lists may be imported by the USDA for experimental or scientific purposes under controlled conditions in accordance with the Departmental permit provisions in § 319.37–2(c).

We would also like to note that the goal of the NAPPRA category is not to respond to specific quarantine pest risks from established trading partners, but rather to prevent the importation of taxa that are quarantine pests or hosts of quarantine pests while a PRA is conducted to determine all the quarantine pests associated with the taxon and, if available, appropriate mitigations. As described earlier, when we find evidence that the importation of taxa of plants for planting that are currently being imported poses a risk of introducing a quarantine pest, we prohibit or restrict their importation through the issuance of a Federal order. The Federal order for such taxa may be followed by a NAPPRA notice for the countries from which the taxa are imported if no mitigations are available for the quarantine pest.

Potential Economic Effects

One commenter expressed concern that the addition of taxa to the NAPPRA lists could have a potentially marked effect on importers and those who rely on imported products to sell, as many of the proposed taxa are commonly traded. As an example, the commenter

[3] To view the CIP proposal and the comments we received in response to it, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0055.*

[4] Available at *http://www.nappo.org/en/data/files/download/PDF/RSPM24-16-10-05-e.pdf.*

[5] Available at *https://www.ippc.int/file_uploaded/1335957921_ISPM_36_2012_En_2012-05-02.pdf.*

cited our determination that imported plants of the genera *Camelia, Rhododendron,* and *Viburnum* are hosts of *Anoplophora chiensis,* the citrus longhorned beetle (CLB). The commenter quoted a summary of imports from a *Phytophthora ramorum* working group consisting of APHIS and the National Plant Board, in which the three genera named earlier plus *Pieris* and *Kalmia* accounted for 584,285 units of importation from the years 2004 through 2010.

As described earlier and in the initial notice, in a few cases, taxa we identified as hosts of quarantine pests that should be added to the NAPPRA category would be allowed to be imported from countries that are currently exporting the taxa to the United States, subject to restrictions in a Federal order that was issued previously. The hosts of CLB were previously regulated under a Federal order,[6] and the identified NAPPRA restrictions for CLB took the Federal order into account.

With respect to CLB hosts specifically, we have re-examined our import records in order to ensure that all countries that have had significant trade with the United States and that generally supply pest-free plants for planting in importation are not included in the NAPPRA list. We found several additional countries that needed to be exempted for various host taxa. Specifically:

- All CLB host taxa from Canada are now exempted from the NAPPRA action.
- New Zealand is now exempted from the NAPPRA action for *Acer* spp.
- Netherlands is now exempted from the NAPPRA action for *Aralia* spp., *Cotoneaster* spp., *Fagus* spp., *Robinia* spp., and *Styrax* spp.
- Thailand is now exempted from the NAPPRA action for *Ficus* spp.
- Israel is now exempted from the NAPPRA action for *Hedera* spp. and *Robinia* spp.
- France is now exempted from the NAPPRA action for *Hibiscus* spp. and *Quercus* spp.
- Japan is now exempted from the NAPPRA action for *Pinus* spp. and *Rhododendron* spp.
- Korea is now exempted from the NAPPRA action for *Pinus* spp.
- United Kingdom is now exempted from the NAPPRA action for *Rubus* spp.

The CLB data sheet has been amended to reflect these changes; the amended CLB data sheet is available on Regulations.gov at the address listed under footnote 1. The importation of these CLB host taxa from the specified countries will continue to be allowed under the conditions in the Federal order. These changes are consistent with our policy for implementing NAPPRA.

As noted earlier, the exemptions from the NAPPRA action for hosts of CLB are based on our trade records, and we reexamined them in the process of developing this final action. We issued the first Federal order restricting imports of CLB hosts in January 2009; as the statistics cited by the commenter reflect years of trade subject only to the general restrictions in the plants for planting regulations, those statistics may not reflect recent trade patterns. In addition, the statistics include genera that were not included in the NAPPRA action for CLB hosts. We have carefully considered potential impacts on existing trade in developing this action, and we will do so for future NAPPRA actions as well.

The commenter also stated that the nursery industry is under a severe contraction due to the national economy, with many companies failing, and that adding taxa to NAPPRA will likely lead to many additional failures and job loss. In addition, the commenter stated, the action would affect many sales orders and contracts that are in the process of being filled. These are often multi-year agreements, often with plant material originating in multiple countries with specific horticultural traits. Without its intended market, the commenter stated, this material will likely be destroyed, creating a loss for oversees trading partners and potential litigation on U.S. importers.

The Plant Protection Act (7 U.S.C. 7701 *et seq.*), the authorizing statute for APHIS' plant health-related activities, authorizes the Secretary of Agriculture to prohibit or restrict the importation of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States. We have determined that adding the taxa specified in this final notice to the NAPPRA lists is necessary to prevent the introduction of plant pests and noxious weeds. The factors cited by the commenter are not within our decisionmaking authority under the Act.

In addition, the taxa we proposed to add to the NAPPRA category have not been imported into the United States in significant amounts. As described earlier, for those taxa that have been imported in significant amounts, we are using Federal orders to restrict their importation, rather than adding them to the NAPPRA category. These factors indicate that our listings under NAPPRA are not likely to cause significant economic hardship to U.S. growers.

Quarantine Pest Plants

As noted above, the NAPPRA category includes plants that are quarantine pests and plants that are hosts of quarantine pests. The regulations in § 319.37–1 define *quarantine pest* as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

Two commenters generally addressed the concept of plant presence in the United States, asking us to adopt a clear standard for determining whether a plant is not yet present in the United States, or present but not widely distributed and being officially controlled. One stated that a taxon should be considered to be present in the United States when the taxon can be shown to have had multiple entries through importation or when the taxon is available in commercial trade. This commenter also stated that there should be a clearly defined standard against which to judge presence if the record shows one or multiple introductions of the taxon, or natural occurrences for plants whose native habitats exist near the United States' northern or southern borders.

Another commenter agreed that any taxon available in commercial trade should be considered to be present, and also indicated that plant taxa that are in cultivation among specialists should be considered to be present. This commenter also stated that only a small percentage of the people who use the Internet ever post any information on it, meaning that an online report from a grower of a taxon probably represents 10 to 100 other growers who also grow the plant. For that reason, any Internet report of growth of a plant in the United States would indicate that the plant was present in the United States.

We consider a plant taxon to be present in the United States if there is evidence that it is being grown here. Commercial trade, cultivation among specialists, and multiple entries through importation would be evidence that a plant is being grown in the United States. We agree with the second commenter that Internet reports of growth of a plant in the United States would indicate that the plant taxon described was present in the United States. However, we have determined that such information may not necessarily indicate that the taxon is

[6] See *http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2011/CitrusandALB2011-04-01.pdf.*

widely distributed within the United States, which is another component of the *quarantine pest* definition.

One commenter stated that taxa that have had some entries into the United States or natural occurrences within the United States with no evidence of invasiveness should not be considered a problem. Another commenter stated that plants that have been imported into the United States sporadically in the past, but that are not currently in cultivation, are not present in the United States. However, the commenter recommended that we consider the fact that the plants did not establish permanently in the United States as evidence against their invasiveness.

Noting that certain taxa that we proposed to add to the NAPPRA category appeared to be present in the United States, one commenter recommended that we put those species under consideration for official control, thus ensuring that they qualify as quarantine pests under the definition. This commenter stated that all species added to the NAPPRA category should be analyzed to determine whether they qualify as Federal noxious weeds under our regulations in 7 CFR part 360.

We generally agree with the first two commenters that taxa that have previously been imported into the United States without problems would not be likely to be considered quarantine pests. However, sometimes the potential economic importance of a taxon's effects on U.S. agricultural and natural resources becomes apparent after importation. New information may also become available indicating that the taxon may pose more of a threat to U.S. agricultural and environmental resources than previously thought. As suggested by the last commenter, these circumstances would spur us to consider placing the taxon under official control by adding it to the list of noxious weeds in 7 CFR part 360.

We determine whether to place a taxon under official control by conducting a weed risk assessment (WRA). If the WRA indicates that official control is necessary, we add the taxon to the list of noxious weeds. Taxa that are present in the United States but not widely distributed and under consideration for official control are potential additions to the NAPPRA category, if they meet the other criteria for being considered a quarantine pest.

We do not automatically conduct WRAs for taxa on the NAPPRA list of quarantine pest plants; people who want a taxon to be removed from the NAPPRA category need to request that a risk analysis be conducted for its removal, as provided in § 319.37–2a(e). However, if we add a taxon to the NAPPRA list of quarantine pest plants in part because we are considering it for official control, then the process of conducting a WRA has already begun, and our decision to remove the taxon from the NAPPRA list or add it to the list of noxious weeds would be based on the results of the WRA.[7]

The first two commenters also mentioned invasiveness as a criterion for adding a plant taxon to NAPPRA. We would like to note that invasiveness in and of itself does not mean that a plant taxon could be considered a quarantine pest; rather, the damage caused by a plant's invasiveness would have to be of potential economic importance.

One commenter stated generally that we should work with private growers and gardeners to monitor plants that are present in the United States and to react quickly if one starts to become a problem.

We agree. We have begun reaching out to gardeners, plant enthusiast societies, and others to share information about plants. We expect that these efforts will help to inform future control efforts.

We made available data sheets detailing the scientific evidence we considered in making the determination that 41 taxa of plants for planting are quarantine pests. We received comments on 21 of those taxa. The comments are discussed below by taxon.

Alstroemeria aurea. Four commenters presented evidence that this species is present in the United States. Three of these commenters also stated that *A. aurea* does not appear to have any invasive tendencies that would warrant designation as a quarantine pest. Based on the evidence presented by the commenters and our own analysis, we have determined that *A. aurea* is widely distributed in the United States, and we are no longer considering *A. aurea* for addition to the NAPPRA list of quarantine pest plants.

Angelica sylvestris. Three commenters presented evidence that this species is present in the United States. Another commenter expressed support for one of these comments. Two of these commenters also stated that *A. sylvestris* does not appear to have any invasive tendencies that would warrant designation as a quarantine pest. We have determined that *A. sylvestris* is widely distributed in the United States, and we are no longer considering *A. sylvestris* for addition to the NAPPRA list of quarantine pest plants.

Artemisia japonica. One commenter presented evidence that this species is present in the United States, specifically that it is mentioned on herbal medicine Web sites. Based on the comment, we have reexamined the available evidence and determined that *A. japonica* is present in the United States and not under official control. Therefore, we are no longer considering *A. japonica* for addition to the NAPPRA list of quarantine pest plants.

Berberis glaucocarpa. One commenter stated that this taxon is widely available in the United Kingdom and that there is a very good chance that it has been sold to the United States. The commenter also stated that *B. glaucocarpa* has not been declared to be an invasive species there.

The data sheet we prepared for *B. glaucocarpa* indicated that it invades forests, forest margins, scrub, and disturbed areas. Its seedlings tolerate shade and establish successfully, shading out native plants and preventing their regeneration. Birds disperse its seeds. *B. glaucocarpa* is naturalized in New Zealand, where it is considered an environmental weed. These factors led to our determination that *B. glaucocarpa* is a quarantine pest. In addition, we can find no information indicating that *B. glaucocarpa* is actually present in the United States. Finally, we are evaluating *B. glaucocarpa* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. Therefore, we are adding *B. glaucocarpa* to the NAPPRA list of quarantine pest plants.

Celtis sinensis. Four commenters presented evidence that this species is present in the United States. Another commenter expressed support for one of these comments. As the taxon is not under consideration for official control, we are no longer considering *C. sinensis* for addition to the NAPPRA list of quarantine pest plants.

Cestrum elegans. Three commenters presented evidence that this species is present in the United States, stating that it is offered for sale in several States, listed in guides to American horticulture, and grown at several arboretums and botanic gardens. We have determined that *C. elegans* is widely distributed in the United States, and we are no longer considering *C. elegans* for addition to the NAPPRA list of quarantine pest plants.

Chrysanthemoides monilifera. One commenter presented evidence that this species is present in the United States,

[7] If the WRA indicated that it was not necessary to list the taxon as a noxious weed, we would conduct a pest risk analysis to determine whether the taxon is a host of any quarantine pests as well.

specifically that it has been sold in the United States and was imported by the USDA 100 years ago. The commenter also stated that the species has been grown under a synonym in the Mediterranean region for about 100 years, and the commenter could find no reports of invasiveness there. We have determined that *C. monilifera* is widely distributed in the United States, and we are no longer considering *C. monilifera* for addition to the NAPPRA list of quarantine pest plants.

Cordia curassavica. One commenter presented evidence that this species is present in the United States, specifically in Florida. Another commenter stated that *C. curassavica* is native to tropical America. This commenter also stated that it has been noted that *C. curassavica* seeds have a short viable life and cannot withstand low temperatures, characteristics that do not make it a good candidate for invasiveness.

However, as described in the data sheet, *C. curassavica* is considered an economically important foreign weed in Trinidad and the Pacific Islands, and there is no obvious reason why it would not be economically important in the warmer parts of the United States. We do not have any evidence that the plant is distributed outside Florida. In addition, we are currently evaluating *C. curassavica* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. Therefore, we are adding *C. curassavica* to the NAPPRA list of quarantine pest plants.

Echinochloa pyramidalis. One commenter stated that the United Nations' Food and Agriculture Organization (FAO) promotes this taxon as a fodder grass for tropical Africa. The commenter quoted the FAO Web page [8] on *E. pyramidalis* as stating that the taxon is a heavy seed producer but sometimes has low germination, so it is propagated by cuttings. The page also states that the taxon is not frost hardy. The commenter stated that such a taxon is not likely to be a quarantine pest in the United States.

As stated in the data sheet, *E. pyramidalis* has decidedly invasive characteristics with its vigorous shoot and rhizome growth and abundant seed production. As an aquatic, it also has the potential to be very damaging to sensitive aquatic habitats. In Guyana, it was first noticed in 1982 and increased rapidly to become one of the most troublesome weeds in the aquatic system of the Guyana Sugar Corporation.

The FAO Web page cited by the commenter indicates that *E. pyramidalis* is adapted to the wet and dry seasons of Africa; the dry season would limit its growth there. The Web page further indicates that new growth is very vigorous after the rains start. If the dry stems are burned during the dry season, vigorous growth from ground level occurs without the incidence of rain. The Web page further states that the plant's dense, tangled, floating stems, rooting at the nodes, provide efficient protection against wave action on the walls of earthen dams or flood induced erosion of river banks. These characteristics indicate that the taxon can grow vigorously and block waterways, which would in turn indicate that it is of potential economic significance. This is consistent with the information we cited in the data sheet for *E. pyramidalis.*

For these reasons, we have determined that the introduction of *E. pyramidalis* would have potential economic significance for the United States, and we are adding *E. pyramidalis* to the NAPPRA list of quarantine pest plants. We are also evaluating it for addition to the list of noxious weeds in 7 CFR part 360.

Gladiolus undulatus. Three commenters presented evidence that this species is present in the United States. One of these commenters also stated that *G. undulatus* does not appear to have any invasive tendencies that would warrant designation as a quarantine pest. We have determined that *G. undulatus* is widely distributed in the United States, and we are no longer considering *G. undulatus* for addition to the NAPPRA list of quarantine pest plants.

Gymnocoronis spilanthoides. One commenter presented evidence that this species is present in the United States. We agree that *G. spilanthoides* is present in the United States, and we are no longer considering it for official control. Therefore, we are no longer considering *G. spilanthoides* for addition to the NAPPRA list of quarantine pest plants.

Hakea gibbosa. One commenter presented evidence that this species is present in the United States. We have determined that *H. gibbosa* is present in the United States, and we are no longer considering *H. gibbosa* for official control. Therefore, we are no longer considering *H. gibbosa* for addition to the NAPPRA list of quarantine pest plants.

Hakea salicifolia. Two commenters presented evidence that this taxon is present in the United States, specifically in California. Another commenter acknowledged that *H. salicifolia* is present in California but stated that the plant was invasive. However, the taxon does not appear to be distributed beyond California within the United States, and we are evaluating *H. salicifolia* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. Therefore, we are adding *H. salicifolia* to the NAPPRA list of quarantine pest plants, as it is not widely distributed and is under official control.

Hakea servicea. One commenter stated that *H. servicea* is listed by several U.S. nurseries but is not currently for sale, which means the nurseries have trouble propagating it and can offer it only sporadically. The commenter stated that this indicates that *H. servicea* is not likely to be invasive.

The history of *H. servicea* elsewhere indicates it is likely to be potentially economically significant, thus qualifying as a quarantine pest. As the data sheet for *H. servicea* indicates, it is included on a list of potentially invasive garden plants in its native Australia. The European Plant Protection Organization categorizes it as an invasive alien plant in New Zealand and South Africa. In New Zealand, it is listed among plants of concern on conservation land. In South Africa, it has proved highly invasive, is rated as a serious weed, and is categorized as a transformer and as a prohibited weed in the most invasive Category 1. We do not know exactly why U.S. nurseries only list this taxon sporadically, but substantial evidence indicates that the introduction of this taxon would have potential economic significance in the United States. For that reason, we are evaluating *H. servicea* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. In addition, there is no evidence indicating that the taxon is widely distributed. Therefore, we are adding *H. servicea* to the NAPPRA list of quarantine pest plants.

Impatiens parviflora. One commenter stated that this plant is growing in California, without providing any references to support this assertion. Regardless of whether the taxon is present in the United States, we have no evidence indicating that it is widely distributed, and we are evaluating *I. parviflora* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. Therefore, we are

[8] See *http://www.fao.org/ag/AGP/AGPC/doc/Gbase/data/pf000231.htm.*

adding *I. parviflora* to the NAPPRA list of quarantine pest plants.

Limnobium laevigatum. Two commenters stated that this taxon is present in California and listed for eradication by the State of California. One commenter stated that the taxon is a popular aquarium plant throughout the United States.

Although the taxon may be in trade, there is little information regarding the extent of that trade; its distribution as a naturalized plant is limited to California. For that reason, we have determined that *L. laevigatum* is not widely distributed within the United States. We are evaluating *L. laevigatum* for addition to the list of noxious weeds in 7 CFR part 360, meaning it is under consideration for official control. Therefore, we are adding *L. laevigatum* to the NAPPRA list of quarantine pest plants.

Nymphoides cristata. One commenter stated that this taxon is a popular garden plant, widely available in the United States. The commenter also cited a tropical botanical garden in Florida that sells the plant.

The data sheet we prepared for this taxon indicated that it is present in Florida and South Carolina (meaning it is not widely distributed) and that it is under consideration for official control. Indeed, we are evaluating *N. cristata* for addition to the list of noxious weeds in 7 CFR part 360. Therefore, we are adding *N. cristata* to the NAPPRA list of quarantine pest plants.

Phyllanthus maderaspatensis. One commenter stated that this taxon is listed as threatened and endangered in Australia.[9] The Australian Web page for this taxon indicated that its threats are competition from other summer-growing annuals, clearing of floodplain habitat, and roadside clearing. The commenter stated that the fact that *P. maderaspatensis* is listed as threatened and endangered in Australia makes it unlikely that the taxon is invasive in the United States.

The data sheet we prepared for *P. maderaspatensis* cited references indicating that the taxon is a weed of concern in its native area, southern Africa, and Sudan, in addition to Australia. Although the evidence the commenter cites tends to dispute those references, the evidence cited in the data sheet has led us to determine that it is necessary to evaluate *P. maderaspatensis* for addition to the list of noxious weeds in 7 CFR part 360. To prevent the introduction of *P. maderaspatensis* during our evaluation, we are adding *P. maderaspatensis* to the NAPPRA list of quarantine pest plants. If the evaluation indicates that *P. maderaspatensis* is not a quarantine pest or a host of a quarantine pest, we will remove it from the NAPPRA list in accordance with § 319.37–2a(e).

Rhamnus alaternus. Three commenters presented evidence that this taxon is present in the United States. As we have determined that this taxon is widely distributed in the United States, we are no longer considering *R. alaternus* for addition to the NAPPRA list of quarantine pest plants.

Senecio angulatus. One commenter presented evidence that this taxon is present in the United States, specifically that it is sold in California. We did not find any other indication that the taxon is present in the United States, indicating that it is not widely distributed. We are evaluating *S. angulatus* for addition to the list of noxious weeds in 7 CFR part 360, meaning that it is under official control. Therefore, we are adding *S. angulatus* to the NAPPRA list of quarantine pest plants.

Wikstroemia indica. One commenter stated that it might be best to find a way for researchers to import this plant, perhaps through a CIP, as it seems to be the hot item for antiviral research and a coumarin substitute.

We are adding *W. indica* to the NAPPRA list of quarantine pest plants. However, as the commenter suggests, researchers will be able to import it through a Departmental permit in accordance with § 319.37–2(c). If the CIP proposal is finalized, we will be able to make permits for research and development in this taxon more widely available.

Hosts of Quarantine Pests

Questions Regarding PRAs

In order to remove a taxon from the NAPPRA category, we will conduct a PRA for the taxon in accordance with paragraph (e) of § 319.37–2a. We received a few questions on the PRA process, all of which focused on the importation of taxa of plants for planting that we determine to be hosts of quarantine pests.

One commenter asked whether the PRAs will address only the pest for which the taxon was added to the NAPPRA category, or all quarantine pests associated with the taxon and the countries included in the PRA.

The PRAs will be comprehensive and analyze all quarantine pests associated with the taxon in the countries included in the PRA, so that we can address all the risks associated with the importation of the plant taxon.

One commenter asked whether we will consider proposals from foreign national plant protection organizations (NPPOs), accompanied by scientific and technical justifications, for the development of specific import requirements for NAPPRA-listed plants (e.g., systems approach, treatment, post-entry quarantine, etc.) prior to the initiation and completion of a PRA.

We would not authorize the importation of a NAPPRA-listed taxon prior to the completion of a PRA, except under Departmental permit (or CIP, if the proposed rule is finalized). However, any information an exporting country wishes to submit regarding potential mitigations for the pests associated with a taxon would be taken into account during the development of a PRA or the issuance of a Departmental permit or CIP.

One commenter asked about how we will prioritize PRAs, the type of information that will be required for the PRA process, timelines for completion of PRAs, and what actions, if any, can be taken by industry to facilitate the process.

PRAs will be prioritized based on whether we have received a request to conduct them. Requests to remove a taxon from the NAPPRA list must be made in accordance with § 319.5. This section, headed ''Requirements for submitting requests to change the regulations in 7 CFR part 319,'' allows anyone to submit a request to change the regulations in 7 CFR part 319, but requires the submission of information from an NPPO before a PRA will be prepared.

We strive to complete all PRAs in a timely manner. However, the length of time it takes to complete a PRA is dependent on several factors, some of which are not in APHIS' control:

- The availability of data on the taxon;
- The timeliness with which the foreign NPPO responds to our requests for information; and
- Competition for APHIS' limited resources available for developing PRAs.

These factors mean that we cannot provide a timetable for preparation of a PRA in response to a request to remove a taxon from the NAPPRA category. However, if a foreign country wishes to be able to conduct trade in a taxon with the United States, we would expect that its NPPO would provide information to

[9] The link the commenter provided, *http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile.aspx?id=10623,* no longer works, but we found a cached version of the page at *http://web.archive.org/web/20090713032340/http://threatenedspecies.environment.nsw.gov.au/tsprofile/profile.aspx?id=10623.*

APHIS in a timely manner, thus helping to reduce the time necessary to complete the PRA. Industry could help foreign NPPOs by working with them to assemble and provide the necessary information.

Distribution of Quarantine Pests

In most cases, under the ''Action under NAPPRA'' heading in the data sheets, we proposed to add taxa that are hosts of quarantine pests to NAPPRA from all countries, rather than just the countries in which the quarantine pest of concern is known to be present.

We received several comments on this policy. One commenter asked whether the pest status of individual countries of origin would be taken into consideration, as designated by the NPPOs of those countries, in order to remove them from the NAPPRA list. Another commenter asked for clarification to be provided on the measures to be implemented in the case of countries where the listed pests are not known to be present.

Our policy in implementing the NAPPRA category is to prevent the importation of hosts from any country, regardless of current pest status, with the following exceptions:

- Taxa of hosts of quarantine pests whose importation we proposed to allow to continue under a Federal order, as described earlier in this document;
- Taxa of hosts of quarantine pests currently being imported from a country in which the pest is not present; and
- Certain taxa from Canada, when Canada is free of the quarantine pest for which the taxa are hosts and when Canada's import regulations and our restrictions specific to Canada ensure that the pest would not be introduced into the United States through the importation of the taxa from Canada.

In general, it is appropriate to add hosts of quarantine pests from all countries to the NAPPRA category because pests can spread quickly from country to country through the movement of plants for planting, and the importation of plants for planting is a high-risk pathway for the introduction of quarantine pests.

Another commenter asked how our policy of adding imports of taxa of hosts of quarantine pests from all countries to the NAPPRA list takes relevant IPPC guidelines into account.

As described above, when a taxon that is a host of a quarantine pest is currently being imported, we take measures other than addition to the NAPPRA category to address the risk associated with that taxon, when such measures are available. For taxa that have not previously been imported, we are following IPPC guidelines by requiring a PRA prior to the importation of a plant taxon from a new country or region.

Cut Flowers

Under the ''Action under NAPPRA'' heading, the data sheets for most of the hosts of quarantine pests indicated that the importation of cut flowers of those taxa would be NAPPRA. One commenter stated that cut flowers should be included in the NAPPRA category only where scientifically justified, as cut flowers are generally intended for consumption rather than for introduction into the environment and thus have historically, and correctly, been regarded as posing a level of risk different than that posed by plants for planting.

The commenter expressed specific concerns about including in the NAPPRA category cut flowers from CLB host taxa, one of which is the genus *Rosa,* which includes roses. The commenter asked that the action under NAPPRA be modified to be consistent with the Federal order, which prohibited cut rose imports only of stems greater than 10 millimeters (mm) in diameter from certain countries. The commenter also asked that we allow the importation of cut roses of any stem diameter from Canada, Denmark, France, Germany, Netherlands, and the United Kingdom. The commenter cited data from USDA's Foreign Agricultural Service indicating that the total value of cut roses imported into the United States was over $325 million and asked that the proposed action be amended to reflect existing trade patterns.

Another commenter agreed that stems 10 mm or smaller in diameter are not likely to transport viable individuals of CLB, but expressed concern regarding larger stems of roses intended for planting, even from the European Union; the commenter stated that the European Union lacks effective border controls and that CLB is established in Italy.

One commenter stated that CLB larvae are not found in host plant material smaller than 10 mm in diameter, meaning such material should be exempt from NAPPRA.

We agree that cut flowers are intended for consumption rather than for propagation. However, cut flowers can be used for propagation, and if so used can transmit quarantine pathogens. The definitions of *plant* and *regulated article* in § 319.37–1 allow us to regulate both articles intended for propagation and articles capable of propagation, as we determine to be necessary. Indeed, for taxa whose importation is prohibited under § 319.37–2(a) due to their potential to introduce plant pathogens, we have historically prohibited the importation of cut flowers of these taxa as well, when they are capable of propagation and a pathway for the introduction of the quarantine pest.

Nevertheless, the commenter is correct that it is important to evaluate whether cut flowers of a taxon of plants for planting are capable of introducing the pest in question before including them in the NAPPRA action for that taxon. We reexamined the taxa we had proposed to add to NAPPRA as hosts of quarantine pests and found that the insect quarantine pests (CLB; *Rhynchophorus ferrugineus,* the red palm weevil; and *Rhynchophorus palmarum,* the giant palm weevil) named in the NAPPRA data sheets are not likely to infest cut flowers of their host taxa. In addition, cut flowers of hosts of the two palm weevils are not used for propagation and so do not present the same risks that cut flowers of other taxa might.

We are updating the ''Action under NAPPRA'' sections of the data sheets for CLB and the palm weevils to reflect the fact that cut flowers of taxa that are hosts of these pests will not be regulated under NAPPRA. However, the importation of cut flowers from hosts of all three of these quarantine pests is restricted in Federal orders, and those restrictions will remain in place. With respect to CLB, the Federal order for CLB exempts stems 10 mm and less in diameter from regulation, as noted earlier, and imposes production and certification requirements on larger stems and on other plants for planting from countries where CLB is known to occur (including the European Union).

The other quarantine pests addressed in the data sheets are all pathogens, and cut flowers from any of the host taxa can serve as a pathway for the introduction of the quarantine pest and can be used for planting. For that reason, we are adding cut flowers of those taxa (as well as all other plant parts other than seed) to the NAPPRA category.

We are not, however, exempting any plant material less than 10 mm in diameter from a CLB host taxon from the NAPPRA category. Such plants are likely intended for propagation, and in order to authorize their importation from a new source we would need to conduct a PRA to analyze all the relevant risks associated with their importation.

Seed

Two commenters stated that seed should be allowed to be imported if the taxon is a host of a quarantine pest (rather than a quarantine pest itself), the quarantine pest is an insect, and the insect's egg-laying habits are not associated with the plant's fruit or seed.

One commenter expressed concern that our proposed addition of taxa such as *Solanum* spp. and *Capsicum* spp. to the NAPPRA list of hosts of quarantine pests would be a problem for growers in Guam who import seed from tropical areas in Asia.

Two commenters expressed specific concern about the designation of *Rubus* spp. as a host of CLB and stated that, since CLB does not target seeds, seeds of *Rubus* spp. could be exempted from NAPPRA restrictions.

We have recognized that seed poses different risks than other plant parts. In the May 2011 final rule, we stated that we would continue to allow the importation of seed from taxa that were added to the NAPPRA list of hosts of quarantine pests, unless there was evidence that the quarantine pest could be introduced via seed. The ''Action under NAPPRA'' sections for all of the taxa that we determined to be hosts of quarantine pests (including *Rubus* spp., *Solanum* spp., and *Capsicum* spp.) indicated that seed would continue to be allowed to be imported.

One commenter stated that we should take into account the size of the importation, as small lots of seed are of a decidedly lower order of risk than bulk commercial shipments of plants or seed.

We agree that the risk of introducing a quarantine pest through imported plants for planting increases with the size of the shipment. However, for plants for planting that are themselves quarantine pests, a single seed could be enough to introduce the quarantine pest and allow it to establish. That is why, for quarantine pest plants, the importation of seed of those taxa is NAPPRA. In addition, in the regulations allowing the importation of small lots of seed without a phytosanitary certificate in § 319.37–4(d), we do not allow the importation of small lots of seed from taxa whose seed is listed as NAPPRA.

Tissue Culture and Roots

One commenter stated that tissue-cultured plants from taxa listed as NAPPRA should be allowed to be imported, as scientific evidence indicates that pests would not accompany tissue-cultured material.

Two commenters stated that the importation of in vitro tissue cultures of *Rubus* spp. should be allowed under the conditions currently in place in the Federal order for CLB. These commenters also stated that roots and root segments of *Rubus* spp. should be exempt from NAPPRA.

While properly tissue-cultured plants are pest-free, plants that are infested with disease prior to tissue culture are likely to be infested when the plant comes out of tissue culture as well. Plants that are added to the NAPPRA list as hosts of an insect quarantine pest may be free of that pest, but there may be other plant pests for which tissue culturing is not an adequate mitigation, or for which there may be special requirements for tissue culturing. In order to fully consider whether tissue culture is an adequate mitigation for all the pests associated with a taxon of plants for planting, we would need to conduct a PRA. Therefore, we cannot allow the importation of tissue cultures of plant taxa listed as NAPPRA. Similarly, roots may be hosts for additional pests for which we would need to conduct a PRA, and we cannot allow the importation of roots from plant taxa listed as NAPPRA.

For *Rubus* spp. specifically, the only countries with which the United States has had significant trade over the past few years in any kind of plants for planting are Canada and the United Kingdom. As noted earlier, both of these countries are now excluded from the NAPPRA action for *Rubus* spp., and importation of *Rubus* spp. from these countries, including tissue culture, will continue to be regulated by the Federal order for CLB and, in the plants for planting regulations, paragraphs (e) and (f) of § 319.37–5.

Harmonization With Canada

Under the ''Action under NAPPRA'' heading of the data sheets for taxa that we determined to be hosts of quarantine pests, we stated for some taxa that we would continue to allow the importation of the taxon from Canada. We stated in the initial notice that we would allow such importation when Canada is free of the quarantine pest for which the taxa are hosts and when Canada's import regulations and our restrictions specific to Canada ensure that the pest would not be introduced into the United States through the importation of the taxa from Canada.

One commenter, the NPPO of Canada, asked us to allow the continued importation from Canada of several taxa that are hosts of quarantine pests in addition to those specified in the initial data sheets. Specifically, the NPPO of Canada asked that we allow the continued importation of hosts of CLB, the red palm weevil, the giant palm weevil, and the pests *Bursaphelenchus cocophilus, Ceratocystis manginecans, Pseudomonas syringae* pv. *actinidae,* and *Xanthomonas axonopodis* pv. *punica.* The NPPO of Canada stated that these pests are not present in Canada and that hosts of these pests are imported into Canada primarily or solely from the United States. Furthermore, the commenter stated, the NPPO of Canada intends to put in place restrictions on the importation of hosts of these pests from other countries that are equivalent to the restrictions we proposed to implement through adding those host taxa to the NAPPRA category.

We agree with this commenter with respect to hosts of CLB. Most host taxa of CLB are commonly cultivated in Canada, and Canada has put in place restrictions on the importation of all CLB host taxa from other countries. As noted earlier in this document, the data sheet for CLB has been updated to indicate that the importation of hosts of this pest from Canada is not restricted under NAPPRA.

With respect to the hosts of the rest of the pests the commenter named, Canada has not yet implemented regulations that are equivalent to adding the host taxa to the NAPPRA category. In addition, it is unlikely that hosts of these pests would be cultivated in Canada, as the pests affect tropical plants, specifically kiwi, mango, palm, and pomegranate plants. Therefore, plants of these taxa that are present in Canada would likely have been imported; if they were imported from an area other than the United States, they could pose a risk of introducing a quarantine pest into the United States, should they be re-exported to the United States. Accordingly, we will continue to include Canada in the list of countries from which the importation of hosts of the red palm weevil, the giant palm weevil, *Bursaphelenchus cocophilus, Ceratocystis manginecans, Pseudomonas syringae* pv. *actinidae,* and *Xanthomonas axonopodis* pv. *punica* is NAPPRA.

If Canada successfully imposes equivalent import restrictions on hosts of these pests in the future, we will reevaluate our decisions.

CLB

One commenter, representing the European Union, noted that 72 taxa of plants for planting were designated as hosts of CLB and thus potential additions to the NAPPRA category, but the pests and pest risks associated with these taxa are well known, since the pest of concern has already been identified. The commenter asked us to clarify the need for strengthening the import requirements for these taxa from the European Union.

We have identified the taxa listed in the CLB data sheet as hosts of a quarantine pest. This indicates that further analysis is necessary before allowing their importation. While one pest is sufficient for adding a taxon to NAPPRA, there may be other quarantine pests associated with the taxa in various areas of the world where the plant may be grown. In order to authorize the importation of these host taxa when we do not have any information about importation of the taxon from a country, we would need to develop a PRA that determines all the pests associated with the taxon in a specific country or area and identifies an appropriate risk mitigation strategy for all those pests. (It is extremely likely that most of the taxa of plants for planting identified as hosts of CLB are also hosts to other quarantine pests, for which we may or may not have practical mitigations.) In the meantime, we are being consistent with IPPC guidelines by not allowing the importation of the host taxa from areas from which they have not recently been imported without a PRA. As discussed earlier, importation of CLB host taxa from areas that have previously exported those taxa to the United States will continue to be regulated by the CLB Federal order.

The commenter asked us to share our technical documentation on the host range of CLB as well as any data on interceptions of CLB in plants from the European Union.

The technical documentation on the host range of CLB is presented in the CLB data sheet. We do not have interception data for CLB from the European Union, for two reasons. First, except for the specific countries from which imports of certain CLB host taxa will continue to be allowed, as described in the amended data sheet available with this final notice, the countries in the European Union have not exported significant quantities of CLB host taxa to the United States. Second, CLB is an internal borer, and such pests are not readily apparent through the visual inspection we conduct at plant inspection stations, which makes it all the more important to develop other means to combat this and any other quarantine pests associated with the CLB host taxa, through the PRA process. As discussed earlier, the importation of CLB host taxa has been subject to mitigations against the introduction of CLB that are set out in a Federal order, and any importation of CLB host taxa that continues after the publication of this notice will occur under the same mitigations.

The data sheet for CLB listed CLB as present in the European Union, among other areas. The commenter stated that most European Union Member States can claim that CLB is not known to occur, based on several years of mandatory annual surveillance. The commenter stated that areas where CLB is established have been demarcated officially, and measures are imposed to ensure that no infested material can leave these areas. The commenter further stated that there are no indications that CLB is present outside demarcated areas, with the exception of isolated findings that can be traced back to imports. The commenter concluded that the entire European Union should not be listed as an area where CLB is present.

As stated in this document, unless we have had significant trade in CLB host taxa with a country, imports of CLB host taxa from all countries will be NAPPRA. As previously established, the countries that comprise the European Union have not exported significant quantities of CLB host taxa to the United States, with limited exceptions as described in the data sheets. Therefore, it does not matter whether CLB is present in the entire European Union or in certain areas for the purposes of this action.

With respect to the assertions made by the commenter, we note that, in the European Union, CLB has been found in the environment surrounding nursery areas, suggesting that infested host material was moved into previously uninfested areas, and may also have moved out of those areas. This would indicate some potential deficiencies in the European Union's regulatory program for this pest. We would undertake a detailed review of the European Union's program for CLB if the European Union requests that we conduct a PRA to allow the importation of CLB host taxa into the United States.

One commenter requested clarification regarding the rationale for adding *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. to the NAPPRA category as hosts of CLB. The commenter stated that our previously established import restrictions for fruit tree propagative material into North America require certification for specific pests of concern, and prohibit importation from non-approved sources. The commenter stated that these measures should mitigate the risk for most pests of potential concern. Another commenter similarly stated that many of the pest species for which taxa were proposed to be listed in the NAPPRA category are already regulated by the United States, including CLB.

We believe the measures the commenter cited are those in paragraphs (b) and (j) of § 319.37–5. These measures specifically address pathogens that may be associated with these genera of fruit trees. They do not provide any protection against CLB. In addition, they do not address other insect or pathogen pests that may be associated with these genera. In order to comprehensively address the risk associated with the importation of these taxa, we need to complete a PRA.

Several commenters expressed concern regarding the potential impact on the bonsai trade of listing *Pinus* spp. and *Rhododendron* spp. as NAPPRA. This trade has been regulated under paragraph (q) of § 319.37–5, which prescribes conditions for the importation of artificially dwarfed plants that are designed to prevent the introduction of insect pests into the United States. Some bonsai are also imported under a bonsai pilot program in which the bonsai are grown for a period of time in postentry quarantine under conditions equivalent to those in § 319.37–5(q).

The commenters stated that the importation of *Pinus* spp. and *Rhododendron* spp. as bonsai, particularly from Japan but also from China and Taiwan, is an important business for them, with investments made in production facilities in Japan and postentry quarantine facilities in the United States and per-tree values of $50,000 or more. The commenters also stated that bonsai are subject to intense monitoring from agricultural officials and have had no pest problems.

Based on these comments, we re-examined our import records to determine whether there was significant trade in *Pinus* spp. and *Rhododendron* spp. from any country we had proposed to list as NAPPRA for those taxa. As noted earlier in this document under the heading ''Potential Economic Effects,'' we determined that there had been significant trade with Japan (although not China or Taiwan). As the conditions in § 319.37–5(q) and in the bonsai pilot program have been successful at mitigating the risk of introducing other quarantine pests into the United States, and as the Federal order for CLB will continue to govern the importation of *Pinus* spp. and *Rhododendron* spp. from Japan, we do not believe excluding Japan from the NAPPRA action for these taxa will increase the risk of introducing quarantine pests into the United States.

Noting that the importation of bonsai is regulated under § 319.37–5(q), one commenter suggested we should continue to allow the importation of any taxon that is to be listed in NAPPRA as a host of a quarantine pest if the taxon is produced in accordance with a USDA-approved systems approach.

The conditions in § 319.37–5(q) were developed to address the risk posed by longhorned beetles, including CLB, in artificially dwarfed plants. However, those conditions apply only to artificially dwarfed plants; it is necessary to restrict the importation of all plants that are hosts of CLB in order to address the risk of introducing CLB. Appropriate conditions for the importation of those host plants can be determined through the PRA process. There may be other quarantine pests associated with a taxon besides the pest or pests addressed by a systems approach and the pest for which the taxon was added to the NAPPRA category. Conducting a PRA will allow us to identify all quarantine pests associated with a taxon and develop appropriate mitigations.

As discussed earlier, in cases where we have experience with importing artificially dwarfed plants under § 319.37–5(q) and the CLB Federal order and have found, through inspection, that they are generally pest-free, we have allowed that trade to continue under the conditions of the Federal order.

One commenter, a company primarily focused on the establishment and management of short rotation plantations of hybrid poplar in North America, Europe, Asia, and South America, expressed concern about the listing of *Populus,* the genus containing poplar species, as NAPPRA. The commenter stated that its breeding and hybridization work takes place in Oregon, meaning the commenter needs to import plant material in the form of soil-free cuttings, seed, and pollen from various countries. The commenter stated that it has followed all regulations for importing plants for planting in the past, and such importations have not resulted in the introduction of any pests to the United States.

The importation of seed of *Populus* spp. will continue to be allowed. While pollen may not be a pathway for CLB, we need to evaluate all the quarantine pests associated with this taxon besides CLB as well, as there have not been significant imports of *Populus* spp. pollen or other plant parts into the United States. Soil-free unrooted cuttings, meanwhile, could easily serve as a pathway for CLB depending on size, and we would need to analyze CLB and any other pests associated with *Populus* spp. through the PRA process before allowing the importation of such plants for planting, as there have not been significant imports of *Populus* spp. from any country except Canada.

One commenter stated a desire to establish a pest-free area for CLB and the Asian longhorned beetle (*Anaplophora glabripennis,* ALB) in Netherlands to allow the importation of fruit trees from that country.

As described in the CLB data sheet that accompanied the July 2011 notice, *Malus* spp. and *Prunus* spp., the two principal genera of fruit trees, from Netherlands will be allowed to be imported under the current regulations for their importation in § 319.37–5(b) and under the conditions of the Federal order. The Federal order includes requirements for production in a pest-free area, pest-free place of production, or pest-free production site for CLB and ALB. We fully support the establishment of pest-free areas in exporting countries, but it is the responsibility of the exporting country's NPPO and local growers to establish and maintain these pest-free areas.

Lachneulla willkommii

One commenter expressed surprise that we had excluded Canada from NAPPRA in the data sheet listing hosts of the pest *Lachneulla willkommii,* since, as the commenter stated, *L. willkommii* is present in Nova Scotia and New Brunswick.

Both Canada and the United States have designated areas under quarantine for this pest. We recognize Canada's quarantine, and Canada recognizes ours. There is no need for further restrictions.

Therefore, in accordance with the regulations in § 319.37–2a(b)(2), we are adding 31 taxa of plants for planting that are quarantine pests and 107 taxa of plants for planting that are hosts of 13 quarantine pests to the list of taxa whose importation is NAPPRA. A complete list of those taxa and the restrictions placed on their importation can be found at the address in footnote 1 of this document or on the Plant Protection and Quarantine Web page at *http://www.aphis.usda.gov/import_export/plants/plant_imports/Q37/nappra/index.shtml.*

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 15th day of April 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–09147 Filed 4–17–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule will meet in Fort Collins, Colorado. The committee operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and recommendations on the implementation of the National Forest System Land Management Rule. The meeting is also open to the public. The purpose of the meeting is to initiate deliberations on formulating advice to the Secretary on the Proposed Land Management Planning Directives.

DATES: The meeting will be held on May 7–9, 2013, from 8:30 a.m. to 6:00 p.m. on Tuesday, 8:30 a.m. to 5:30 p.m. on Wednesday, and 8:30 a.m. to 1:30 p.m. on Thursday, Mountain Time.

ADDRESSES: The meeting will be held at the Hilton Fort Collins, 425 West Prospect Road, Fort Collins, Colorado 80526.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 1601 N Kent Street, Arlington, VA 22209, 6th Floor. Please contact ahead of time, Chalonda Jasper at 202–260–9400, *cjasper@fs.fed.us,* to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Chalonda Jasper, Ecosystem Management Coordination, 202–260–9400, cjasper@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Initial deliberations on formulating advice for the Secretary on the Proposed Land Management Planning Directives, (2) discuss findings from committee working groups, and (3) administrative tasks. Further information, including the meeting agenda, will be posted on the Planning Rule Advisory Committee Web site at *http://www.fs.usda.gov/main/planningrule/committee.*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC, 20250–1104. Comments may also be sent via email to Chalonda Jasper at *cjasper@fs.fed.us,* or via facsimile to 703–235–0138. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/planningrule/committee* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please submit request prior to the meeting by contacting Chalonda Jasper at 202–260–9400, *cjasper@fs.fed.us.* All reasonable accommodation requests are managed on a case-by-case basis.

Dated: April 11, 2013.

James W. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2013–09110 Filed 4–17–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–91–2012]

Foreign-Trade Zone 22—Chicago, Illinois, Authorization of Production Activity, Abbott Laboratories, Inc., AbbVie, Inc. (Pharmaceutical Production), North Chicago, Illinois, Area

On December 14, 2012, Abbott Laboratories, Inc., and AbbVie, Inc., submitted a notification for expanded production authority within Subzones 22F and 22S, respectively, at sites located in the North Chicago and Lake County, Illinois, area.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 75610, 12–21–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: April 12, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–09163 Filed 4–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–92–2012]

Authorization of Production Activity, Foreign-Trade Subzone 26L, Suzuki Mfg. of America Corp. (All-Terrain Vehicles), Rome, Jonesboro and Cartersville, Georgia

On November 19, 2012, Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Suzuki Mfg. of America Corp.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 75972–75973, 12–26–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: April 11, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–09048 Filed 4–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2013]

Foreign-Trade Zone (FTZ) 230—Piedmont Triad Area, North Carolina; Notification of Proposed Production Activity; Oracle Flexible Packaging, Inc.; (Foil-Backed Paperboard); Winston-Salem, North Carolina

The Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity on behalf of Oracle Flexible Packaging, Inc. (OFPI), located in Winston-Salem, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 25, 2013.

The OFPI facility is located within Site 28 of FTZ 230. The facility is used for the production of aluminum foil-backed paperboard and to laminate plastic film (the laminating activity is not ''production'' activity under the FTZ Board's regulations). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt OFPI from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, OFPI would be able to choose the duty rates during customs entry procedures that apply to aluminum foil-backed paperboard and aluminum scrap (free—3.7%) for the foreign aluminum foil noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: aluminum foil (not backed) and plastic (propylene) film (duty rate ranges from 3.0 to 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 28, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: April 9, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–09047 Filed 4–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 11, 2012, the Department of Commerce (the

Department) published the preliminary results of the administrative review of the antidumping duty order on lightweight thermal paper from Germany.[1] The period of review (POR) is November 1, 2010, through October 31, 2011. We invited interested parties to comment on the preliminary results. After reviewing the comments received, we made no changes to the dumping margin assigned to Papierfabrik August Koehler AG (Koehler). Therefore, the final results do not differ from the preliminary results. The final dumping margin for Koehler is listed below in the section entitled ''Final Results of Review.''

DATES: Effective Date: April 18, 2013.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Terre Keaton Stefanova, 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) 482–4136 or (202) 482–1280, respectively.

Background

Since the publication of the *Preliminary Results,* the following events have occurred. In January 2013, Koehler submitted a case brief, the petitioner (Appleton Papers Inc.) submitted its rebuttal brief, and both parties requested a hearing. On February 13, 2013, we held a public hearing.

The Department has conducted this administrative review in accordance with section

751(a)(1) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is lightweight thermal paper. The merchandise subject to the order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3703.10.60, 4811.59.20, 4811.90.8000, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9000, 4811.90.9030, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.10.20, and 4823.40.00. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the *Order,* remains dispositive.[2]

Application of Adverse Facts Available (AFA)

In the *Preliminary Results,* we found that Koehler: (A) Withheld information that had been requested by the Department; (B) failed to provide such information in a timely manner or in the form or manner requested; (C) significantly impeded this proceeding; and (D) provided information that cannot be verified. In addition, we found that Koehler did not act to the best of its ability to respond to the Department's requests for information. Therefore, pursuant to sections 776(a) and (b) of the Act, we determined that the use of AFA was appropriate as the basis for the dumping margin for Koehler.[3] Having considered the arguments raised by the parties in the case and rebuttal briefs, we continue to find that the application of AFA is warranted and have assigned to Koehler a dumping margin of 75.36 percent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the memorandum entitled, ''Issues and Decision Memorandum for the Final Results of the 2010–2011 Administrative Review on Lightweight Thermal Paper from Germany (Issues and Decision Memo),'' which is dated concurrently with, and adopted by, this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as Appendix I. The Issues and Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memo and the electronic version of the Issues and Decision Memo are identical in content.

Final Results of the Review

We made no changes to our preliminary results. Therefore, we are assigning the following dumping margin to Koehler for the period November 1, 2010, through October 31, 2011.

Manufacturer/Exporter	Percent margin
Papierfabrik August Koehler AG ..	75.36

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review. For Koehler's U.S. sales, we will base the assessment rate assigned to the corresponding entries on AFA, as noted above.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of lightweight thermal paper from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Koehler will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.50 percent, the all-others rate established in the investigation.[4] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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

[1] *See Lightweight Thermal Paper from Germany; Preliminary Results Antidumping Duty Administrative Review; 2010–2011,* 77 FR 73615 (December 11, 2012) (*Preliminary Results*).

[2] For a complete description of the scope, *see Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008) (*Order*).

See also Preliminary Results and accompanying Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Lightweight Thermal Paper from Germany (Preliminary Decision Memorandum).

[3] *See Preliminary Results,* Preliminary Decision Memorandum, and Memorandum to the File entitled ''Lightweight Thermal Paper from Germany: Preliminary Results of Antidumping Duty Administrative Review: Application of Total Adverse Facts Available to Koehler,'' dated December 3, 2012.

[4] *See Order.*

could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: April 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Issues and Decision Memo

1. Application of Total Adverse Facts Available (AFA).
2. Selection of the AFA Rate.

[FR Doc. 2013–09049 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–921]

Lightweight Thermal Paper From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the countervailing duty order on lightweight thermal paper from the People's Republic of China (''PRC'') for the period January 1, 2011, through December 31, 2011.

DATES: *Effective Date:* April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0914.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated an administrative review of the countervailing duty order on lightweight thermal paper from the PRC covering the period January 1, 2011, through December 31, 2011, based on a request by Appleton Papers, Inc. (''Petitioner''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 77017 (December 31, 2012).

The review covers the following companies: Guangdong Guanhao High-Tech Co., Ltd.; Henan Province Jianghe Paper Co., Ltd.; Jianghe Paper Co., Ltd.; JHT Paper; New Pride Co., Ltd.; and Shenzhen Taizhou Industrial Development Co., Ltd. On April 1, 2013, Petitioner withdrew its request for an administrative review of these companies.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, Petitioner withdrew its request within the 90-day deadline and no other parties requested an administrative review of the countervailing duty order. Therefore, we are rescinding the administrative review of lightweight thermal paper from the PRC covering the period January 1, 2011, through December 31, 2011.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties on all entries of lightweight thermal paper from the PRC during the POR at rates equal to the cash deposit of estimated countervailing 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 to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period.

This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or 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 that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 11, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–09162 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC630

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: NOAA's National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Issuance of a scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued scientific research Permit 15610 to the Oregon State University, Department of Fisheries and Wildlife (OSU).

ADDRESSES: The permit application, the permit, and related documents are available for review, by appointment, at the foregoing address at: Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802 phone: 562–980–4026, fax: 562–980–4027, email at: *Matthew.McGoogan@noaa.gov).* The permit application is also available for review online at the Authorizations and Permits for Protected Species Web site at *https://apps.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at 562–980–4026, or email: *Matthew.McGoogan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species that are the subject of the permits; and, (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to the federally endangered Southern California Distinct Population Segment of steelhead (*Oncorhynchus mykiss*).

Permit Issued

A notice of the receipt of an application for Permit 15610 was published in the **Federal Register** on November 14, 2012 (77 FR 67796). Permit 15610 was issued to OSU on March 4, 2013. Permit 15610 authorizes OSU to conduct a scientific study of steelhead on several streams in the Ventura River watershed in Ventura County, California. The primary objectives of this study are to (1) determine if population genetic structure exists in the steelhead and rainbow trout subpopulations in the Ventura Basin, (2) determine smoltification patterns of steelhead and rainbow trout in the Ventura Basin and influence between the two life history forms, and (3) determine downstream migration patterns for steelhead and rainbow trout and how those patterns may be influenced by environmental conditions.

Research activities include (1) monitoring water temperature, (2) capturing smolts and adult steelhead in a migrant trap at the Robles Diversion Dam, (3) capturing smolts and juvenile steelhead using a seine in the Ventura River estuary, (4) capturing smolts and juvenile steelhead by electrofishing pre-determined sample sites throughout the Ventura River watershed, (5) recording weight and length of smolts and juvenile steelhead, (6) removing tissue (gill and fin clip) samples from smolts and juvenile steelhead, (7) analyzing fin clips for genetic structure, (8) analyzing gill samples for ATPase (decomposition of adenosine triphosphate (ATP) into adenosine diphosphate and a free phosphate ion as an indicator of smoltification, and (9) inserting Passive Integrated Transponder (PIT) tags into smolts and juvenile steelhead.

Permit 15610 authorizes the non-lethal capture and release of up to 210 juvenile steelhead (30 juvenile steelhead from 7 different sites) over the course of 1 year for the purpose of genetic sampling (fin clip), the capture and release of up to 684 steelhead smolts (342 smolts annually over 2 years of sampling) and 304 juvenile steelhead (152 juvenile steelhead annually over 2 years of sampling) for the purpose of PIT tagging and tissue (gill/ATPase) sampling, capture and release of up to 10 adult steelhead (5 adults annually over 2 years of sampling) for genetic sampling (fin clip), and up to 40 tissue samples (fin clip) from adult steelhead carcasses (20 adult carcasses annually over 2 years of sampling). The authorized unintentional lethal take for Permit 15610 is a total of 9 juvenile steelhead and 16 steelhead smolts. All mortalities will be sent to NMFS Protected Resources Division in Long Beach, California for genetic research and processing. Field activities associated with Permit 15610 began after the permit was issued on March 4, 2013, and will cease when the permit expires on May 31, 2015.

Dated: April 15, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–09107 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC617

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Wednesday and Thursday, May 15–16, 2013. The meeting will begin at 9 a.m. on Wednesday, May 15 and conclude by 4 p.m. on Thursday, May 16.

ADDRESSES: The meeting will be held at Admiral Fell Inn, 888 S. Broadway, Baltimore, MD 21231; telephone: (410) 522–7377.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: Agenda items for the SSC meeting include: review multi-year ABC specifications for *Loligo* and *Illex* squid and Atlantic mackerel; make ABC recommendation for Atlantic butterfish (2014–15); make multi-year ABC recommendations (2014–16) for surfclams and ocean quahogs; review criteria for establishing multi-year ABC recommendations; and establish research priorities for 2014.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: April 15, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09112 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC625

Marine Fisheries Advisory Committee Meeting

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held May 9, 2013 from 1 p.m. to 5 p.m. and May 10, 2013, from 8 a.m. to 5 p.m.

ADDRESSES: On May 9, the meeting will be held at the Mayflower Renaissance, 1127 Connecticut Avenue NW., Washington, DC 20036; 202–776–9145. On May 10, the meeting will be at the Courtyard Washington Embassy Row, 1600 Rhode Island Avenue NW., Washington, DC 20036; 202–293–8000.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 427–8004; email: *Mark.Holliday@noaa.gov*.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and summaries of prior meetings are located online at *http://www.nmfs.noaa.gov/ocs/mafac/*.

Matters To Be Considered

This agenda is subject to change.

The meeting is convened to hear presentations and discuss policies and guidance on the following topics: Fisheries certification and sustainability, Endangered Species Act and current protected resources issues, outcomes of the Managing Our Nation's Fisheries 3 conference and next steps, and NMFS budget. The meeting will include discussion of various MAFAC administrative and organizational matters and may include meetings of the standing subcommittees.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Holliday, MAFAC Executive Director; 301–427–8004 by April 26, 2013.

Dated: April 15, 2013.

Samuel D. Rauch III,

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

[FR Doc. 2013–09148 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC627

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Meetings of the South Atlantic Fishery Management Council's Habitat & Environmental Protection Advisory Panel (AP); Coral AP; Joint Meeting of the Habitat & Environmental Protection AP and Coral AP; and Deepwater Shrimp AP.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold the AP meetings in North Charleston, SC.

DATES: The meetings will be held from 8:30 a.m. on Tuesday, May 7, 2013 until 5 p.m. on Thursday, May 9, 2013.

ADDRESSES: The meetings will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC 29418; telephone: (800) 445–8667 or (843) 308–9330; fax: (843) 308–9331.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

Habitat AP Agenda, Tuesday, May 7, 2013, 8:30 a.m. until 4:30 p.m.

1. Review draft Essential Fish Habitat (EFH) policy statements.
2. Review status of developing a state of the South Atlantic Habitat report.
3. Receive an update on regional ecosystem coordination and South Atlantic Habitat and Ecosystem Atlas/Digital Dashboard.
4. Receive a project/permit update from NOAA Fisheries Habitat Conservation Division.

Coral AP Agenda, Tuesday, May 7, 2013, 1 p.m. Until 5 p.m.

1. Receive an update from NOAA Fisheries Habitat Conservation Division.
2. Receive an update on Coral Nursery Restoration Work and Utilization.
3. Receive an update on the status of the Endangered Species Act (ESA) listing of coral species.
4. Review Coral AP recommendations in Coral Amendment 8, pertaining to Coral Habitat Areas of Particular Concern (HAPCs) and transit through the Oculina HAPC.
5. Proceed with the election of a vice-chair for the AP.

Joint Habitat & Environmental Protection AP and Coral AP Agenda, Wednesday, May 8, 2013, 8:30 a.m. Until 12 p.m.

1. Receive an update on Vessel Monitoring Systems (VMS) data.
2. Review Coral Amendment 8 and recommendations for protecting deepwater habitat complexes associated with extension proposals for Coral HAPCs.

Deepwater Shrimp AP Agenda, Thursday, May 9, 2013, 9 a.m. Until 5 p.m.

1. Receive and discuss Coral Amendment 8, including a review of spatial information on habitat mapping and fishery activity for the modified Coral HAPC area alternatives.
2. Receive a presentation on VMS functionality from NMFS Office of Law Enforcement.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 12, 2013.

William D. Chappell,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09073 Filed 4–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV04

Endangered Species; File Nos. 14759–01 and 16375–01

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

ACTION: Notice; receipt of applications for permit modification.

SUMMARY: Notice is hereby given that the North Carolina Cooperative Fish and Wildlife Research Unit, North Carolina State University, Raleigh, NC 27695 [Joseph Hightower: Responsible Party], has applied in due form for permit modifications to take shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before May 20, 2013.

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 Nos. 14759–01 and 16375–01 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

• Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

• Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on either application should be submitted to the Chief, Permits and Conservation Division

• By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email);

• By facsimile to (301) 713–0376; or

• At the address listed above.

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 the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns at (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit modifications are requested under the authority of 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. 14759 was issued August 20, 2010 (75 FR 53278), and Permit No. 16375 was issued on April 6, 2012 (77 FR 21754) to the applicant listed above. Each permit currently authorizes the permit holder to assess the presence, abundance, and distribution of shortnose sturgeon and Atlantic sturgeon, respectively, within North Carolina rivers (Chowan, Roanoke, Tar-Pamlico, Neuse, and Cape Fear) and estuaries (Albemarle Sound) using non-lethal sampling methods, using hydroacoustic surveys (side-scan, DIDSON) and gill nets. The permit holder is now requesting authorization to modify both permits to allow use of artificial substrates for characterizing spawning activity in the Roanoke and/or Cape Fear Rivers. Specifically, it is proposed that artificial substrates be used for collecting up to 50 shortnose sturgeon and 50 Atlantic sturgeon early life stages (ELS) per river annually. Proposed sampling for ELS would be conducted up to the first impassible dam, i.e., river kilometer 221 in the Roanoke River and river kilometer 300 in the Cape Fear River. The artificial substrates for collecting sturgeon ELS would be made from floor buffing pads, approximately 2 feet in diameter, and these would anchored to the river bottom and marked with a buoy. The pads would be monitored at least twice per week during suspected spawning runs of either species. The modifications would be valid until the respective permits expire on August 19, 2015 (File No. 14759), and April 5, 2017 (File No. 16375).

Dated: April 15, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–09142 Filed 4–17–13; 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 (CNCS) has submitted a modification to a currently approved public information collection request (ICR) entitled Senior Corps Grant Application 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, Wanda Carney, at (202) 606–6934 or email to *wcarney@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 CNCS, 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

The 60-day *Notice* soliciting comments was published on December 10, 2012 on page 73454. Five public comments were received. All comments received supported all changes that would streamline language, remove redundant text, and simplify and reorder narrative questions to be clearer for applicants to address.

Description: CNCS is seeking approval of the Senior Corps Grant Application, as revised. The Grant Application is used by RSVP, Foster Grandparent and Senior Companion Program grantees, and for potential applicants. The Senior Corps Grant Application is currently approved through September 30, 2015.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: None.

Affected Public: Current and potential grantees of the RSVP, Foster Grandparent, and Senior Companion programs.

Total Respondents: 1,519.

Frequency: Annual.

Average Time Per Response: 5 hours.

Estimated Total Burden Hours: 7,595.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 15, 2013.

Erwin J. Tan,

Director, Senior Corps.

[FR Doc. 2013–09136 Filed 4–17–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–10 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 29 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-10, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $10.8 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–10

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1)

of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment*.	$8.1 billion
Other	$2.7 billion
TOTAL	$10.8 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* (60) F–35 Joint Strike Fighter Conventional Take Off and Landing (CTOL) aircraft. Aircraft will be configured with the Pratt & Whitney F–135 engines, and (9) Pratt & Whitney F–135 engines are included as spares. Other aircraft equipment includes: Electronic Warfare Systems; Command, Control, Communication, Computer and Intelligence/Communication, Navigational and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Autonomic Logistics Information System (ALIS); Full Mission Trainer; Weapons Employment Capability, and other Subsystems, Features, and Capabilities; F–35 unique infrared flares; Reprogramming center; F–35 Performance Based Logistics. Also included: software development/integration, aircraft ferry and tanker support, support equipment, tools and test equipment, communication equipment, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (SAC)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 29 March 2013

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea—F–35 Joint Strike Fighter Aircraft

The Government of the Republic of Korea has requested a possible sale of (60) F–35 Joint Strike Fighter Conventional Take Off and Landing (CTOL) aircraft. Aircraft will be configured with the Pratt & Whitney F–135 engines, and (9) Pratt & Whitney F–135 engines are included as spares. Other aircraft equipment includes: Electronic Warfare Systems; Command, Control, Communication, Computer and Intelligence/Communication, Navigational and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Autonomic Logistics Information System (ALIS); Full Mission Trainer; Weapons Employment Capability, and other Subsystems, Features, and Capabilities; F–35 unique infrared flares; reprogramming center; F–35 Performance Based Logistics. Also included: software development/integration, aircraft ferry and tanker support, support equipment, tools and test equipment, communication equipment, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics and program support. The estimated cost is $10.8 billion.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner nation. The Republic of Korea continues to be an important force for peace, political stability, and economic progress in North East Asia.

The proposed sale of F–35s will provide the Republic of Korea (ROK) with a credible defense capability to deter aggression in the region and ensure interoperability with U.S. forces. The proposed sale will augment Korea's operational aircraft inventory and enhance its air-to-air and air-to-ground self-defense capability. The ROK's Air Force F–4 aircraft will be decommissioned as F–35's are added to the inventory. Korea will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this aircraft system and support will not negatively alter the basic military balance in the region.

The prime contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; and Pratt & Whitney Military Engines in East Hartford, Connecticut. This proposal is being offered in the context of a competition. If the proposal is accepted, it is expected that offset agreements will be required.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of 15 years. U.S. contractor representatives will be required in Korea to conduct Contractor Engineering Technical Services (CETS) and Autonomic Logistics and Global Support (ALGS) for after-aircraft delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–10

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The F–35 Conventional Take-Off and Landing (CTOL) Block 3 aircraft is classified Secret, except as noted below. It contains current technology representing the F–35 low observable airframe/outer mold line, Pratt & Whitney engine, radar, integrated core processor central computer, mission systems/electronic warfare suite, a multiple sensor suite, operational flight and maintenance trainers, technical data/documentation, and associated software. As the aircraft and its subsystems are under development, many specific identifying equipment/system nomenclatures have not been assigned to date. Sensitive and classified elements of the F–35 CTOL Block 3 aircraft include hardware, accessories, components, and associated software for the following major subsystems:

a. The Propulsion system is classified Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The single 40,000-lb thrust class engine is designed for low observability and has been integrated into the aircraft system, Pratt & Whitney, with the F135, is developing and producing engine turbo machinery compatible with the F–35 and assures highly reliable, affordable performance. The engine is designed to be utilized in all F–35 variants, providing unmatched commonality and supportability throughout the worldwide base of F–35 users. The CTOL propulsion configuration consists of a main engine, diverterless supersonic inlet, and a Low Observable Axisymmetric Nozzle (LOAN).

b. The AN/APG–81 Active Electronically Scanned Array (AESA) provides mission systems with air-to-air and air-to-ground tracks which the mission system uses as a component to sensor fusion. The AESA allows the radar to direct RF energy in a way that does not expose the F–35, allowing it to maintain low observability in high-threat environments. The radar subsystem supports integrated system performance for air-to-air missions by providing search, track, identification, and AIM–120 missile data link functionality. The radar also provides synthetic aperture radar mapping for locating surface targets and weather mapping for weather avoidance. The radar functions are tightly integrated, interleaved, and managed by an interface to sensor management functions within mission software. The hardware and software are classified Secret.

c. The Electro Optical Targeting System (EOTS) contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The EOTS subsystem to the sensor suite provides long-range detection; infrared targeting and tracking systems to support weapon employment. It incorporates a missile-quality Infrared Search and Track (IRST) capability, a Forward-Looking Infrared (FLIR) sensor for precision tracking, and Bomb Damage Indication (BDI) capability. EOTS replaces multiple separate internal or podded systems typically found on legacy aircraft. The functionality of the EOTS employs the following modes: Targeting FLIR; Laser Range-Finding and Target Designation; EO DAS and EOTS Performance.

d. The Electro-Optical Distributed Aperture System (EODAS) is a subsystem to the sensor suite and provides full spherical coverage for air-to-air and air-to-ground detection and Navigation Forward Looking Infrared (NFLIR) imaging. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The NFLIR capability provides infrared (IR) imagery directly to the pilot's Helmet-Mounted Display for navigation in total darkness, including takeoff and landing, and provides a passive IR input to the F–35's sensor fusion algorithms. The all-aspect missile warning function provides time-critical warnings of incoming missiles and cues other subsystems to provide effective countermeasure employment. EODAS also provides an IRST function that can create and maintain Situational Awareness-quality tracks (SAIRST). EODAS is a mid-wave Infrared (IR) system consisting of six identical sensors distributed around the F–35 aircraft. Each sensor has a corresponding airframe window panel integrated with the aircraft structure to meet aerodynamic and stealth requirements.

e. The Electronic Warfare (EW) system contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. Sensitive elements include: apertures; radio frequency (RF) and infrared (IR) countermeasures; and Electronic Countermeasures (ECM) techniques and features. The reprogrammable, integrated system provides radar warning and electronic support measures (ESM) along with a fully integrated countermeasures (CM) system. The EW system is the primary subsystem used to enhance situational awareness, targeting support and self defense through the search, intercept, location and identification of in-band emitters and to automatically counter IR and RF threats. The IR and RF countermeasures are classified Secret. This system uses low signature-embedded apertures, located in the aircraft control surface edges, to provide direction finding and identification of surface and airborne emitters and the geo-location of surface emitters. The system is classified Secret.

f. The Command, Control, Communications, Computers and Intelligence/Communications, Navigation, and Identification (C4I/CNI) system provides the pilot with unmatched connectivity to flight members, coalition forces, and the battlefield. It is an integrated subsystem designed to provide a broad spectrum of secure, anti-jam, covert voice and data communications, precision radio navigation and landing capability, self-identification, beyond visual range target identification, and connectivity with off-board sources of information. The functionality is tightly integrated within the mission system for enhanced efficiency and effectiveness in the areas of communications, navigation, identification, and sensor fusion. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The CNI function includes both Secret and Unclassified elements. Sensitive elements of the CNI subsystems include:

(1) The VHF/UHF Voice and Data (Plain and Secure) Communication functionality includes air-to-air UHF/VHF voice and data, both clear and secure, to provide communications with other friendly and coalition aircraft, air-to-ground UHF voice to provide communications with ground sites, and intercommunication voice and tone alerts to provide communications between the avionics system and the pilot. UHF/VHF downlink of air vehicle status and maintenance information is provided to notify the ground crews of the amounts and types of stores, fuel, and other supplies or equipment needed to quickly turn the aircraft for the next mission. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(2) The Tactical Air Navigation (TACAN) functionality provides operational modes to identify ground station and to provide bearing-to-station, slant range-to-ground station, bearing-to-airborne station and slant range to the nearest airborne station or aircraft. TACAN is not unique to the F–35 aircraft but is standard on most USAF aircraft. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(3) The Identification Friend or Foe Interrogator and Transponder Identification functionality consists of integrated Mark XII Identification Friend or Foe (IFF) transponder capability to provide identification of other friendly forces. The CNI system supports sensor fusion by supplying data from IFF interrogations and off-board sources through the intra-flight data link. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(4) The Global Positioning System Navigation functionality includes the Global Positioning System (GPS) aided inertial navigation to provide high-quality positional navigation, and the Instrument Landing System (ILS)/Tactical Air Control and Navigation (TACAN) to provide navigation and landing cues within controlled airspace. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(5) The Multi-Function Advanced Data Link (MADL) is used specifically for communications between F–35 aircraft and has a very low probability of intercept, contributing to covert operations. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(6) The Inertial Navigation System is an all-attitude, Ring Laser Gyro-based navigation system providing outputs of linear and angular acceleration, velocity, body angular rates, position, attitude (roll, pitch, and platform azimuth), magnetic and true heading, altitude, and time tags. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(7) The Radar Altimeter functionality is a module provided in the CNI system rack 3A and uses separate transmit and receive antennae. It measures and reports altitude, and altitude rate of change. Control data is transferred over to a configurable avionics interface card which translates the information to the F–35 aircraft computers. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(8) The Instrument Landing System (ILS) measures, and reports azimuth course and alignment, elevation course

alignment, and distance to the runway. Data from the ILS is used to drive visual flight instrumentation. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(9) The Tactical Data Links is a secure broadcast Tactical Digital Information Link (TADIL) used for real-time voice/data exchange for command and control, relative navigation, and Precise Position Location Identification (PPLI), providing Link-16 type capabilities. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

g. The F–35 Autonomic Logistics Global Sustainment (ALGS) includes both Secret and Unclassified elements. It provides a fully integrated logistics management solution. ALGS integrates a number of functional areas, including supply chain management, repair, support equipment, engine support, and training. The ALGS infrastructure employs a state-of-the-art information system that provides real-time, decision-worthy information for sustainment decisions by flight line personnel. Prognostic health monitoring technology is integrated with the air system and is crucial to the predictive maintenance of vital components.

h. The F–35 Autonomic Logistics Information System (ALIS) includes both Secret and unclassified elements. The ALIS provides an intelligent information infrastructure that binds all of the key concepts of ALGS into an effective support system. ALIS establishes the appropriate interfaces among the F–35 Air Vehicle, the warfighter, the training system, government information technology (IT) systems, JSF operations, and supporting commercial enterprise systems. Additionally, ALIS provides a comprehensive tool for data collection and analysis, decision support, and action tracking.

i. The F–35 Training System includes both Secret and unclassified elements. The Training System includes several types of training devices, to provide for integrated training of both pilots and maintainers. The pilot training devices include a Full Mission Simulator (FMS) and Deployable Mission Rehearsal Trainer (DMRT). The maintainer training devices include an Aircraft Systems Maintenance Trainer (ASMT), Ejection System Maintenance Trainer (ESMT), and Weapons Loading Trainer (WLT). The F–35 Training System can be integrated, where both pilots and maintainers learn in the same Integrated Training Center (ITC). Alternatively, the pilots and maintainers can train in separate facilities (Pilot Training Center and Maintenance Training Center).

j. Weapons employment capability is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified Secret. Sensitive elements include co-operative targeting.

k. Other Subsystems, Features, and Capabilities:

(1) The Low Observable Air Frame is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is Secret. Sensitive elements include: the Radar Cross Section and its corresponding plots, construction materials and fabrication.

(2) The Integrated Core Processor (ICP) Central Computer is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified Secret. Sensitive elements include: F–35 Integrated Core Processor utilizing Commercial Off the Shelf (COTS) Hardware and Module Design to maximize growth and allow for efficient Management of DMS and Technology Insertion, if additional processing is needed, a second ICP will be installed in the space reserved for that purpose, more than doubling the current throughput and memory capacity.

(3) The F–35 Helmet Mounted Display System (HMDS) is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: HMDS consists of the Display Management Computer-Helmet, a helmet shell/display module, a quick disconnect integrated as part of the ejection seat, helmet trackers and tracker processing, day- and night-vision camera functions, and dedicated system/graphics processing. The HMDS provides a fully sunlight readable, bi-ocular display presentation of aircraft information projected onto the pilot's helmet visor. The use of a night vision camera integrated into the helmet eliminates the need for separate Night Vision Goggles (NVG). The camera video is integrated with EO and IR imaging inputs and displayed on the pilot's visor to provide a comprehensive night operational capability.

(4) The Pilot Life Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: a measure of Pilot Chemical, Biological, and Radiological Protection through use of On Board Oxygen Generating System (OBOGS); and an escape system that provide additional protection to the pilot. OBOGS takes the Power and Thermal Management System (PTMS) air and enriches it by removing gases (mainly nitrogen) by adsorption, thereby increasing the concentration of oxygen in the product gas and supplying breathable air to the pilot.

(5) The Off-Board Mission Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: mission planning, mission briefing, maintenance/intelligence/tactical debriefing, sensor/algorithm planning, EW system reprogramming, data debrief, etc.

l. Publications: Manuals are considered Secret as they contain information on aircraft/system performance and inherent vulnerabilities.

2. The JSF Reprogramming Center is classified Secret and contains technology representing the latest state-of-the-art in several areas. This hardware/software facility provides a means to update JSF electronic warfare databases. Sensitive elements include: EW software databases and tools to modify these databases.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–09094 Filed 4–17–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–11]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 29 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-11, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $2.408 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–11

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment*.	$1.167 billion
Other	$1.241 billion
TOTAL	$2.408 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

60 Active Electronically Scanned Array Radar (AESA) radar sets
60 Digital Electronic Warfare Systems (DEWS)
60 AN/AAQ–33 Sniper Targeting Systems
60 AN/AAS–42 Infrared Search and Track (IRST) Systems
69 Link-16 Terminals and spares
132 Ultra High Frequency/Very High Frequency (UHF/VHF) Secure radio with HAVE QUICK II

Also included are the Advanced Display Core Processor II, Joint Mission Planning System, various support equipment items, GEM–V GPS airborne receiver module, and communication security, software development/integration, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contract engineering and logistical personnel services, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (SAP)

(v) *Prior Related Cases if any:*

FMS Case SIR—$128M—10 Aug 02
FMS Case CAC—$3M—7 May 08
FMS Case SAB—$146M—10 Jan 08

(vi) *Sales Commission Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 29 March 2013

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea—F–15 Silent Eagle Aircraft

The Republic of Korea has requested a possible hybrid case in support of (60) F–15 Silent Eagle aircraft being procured via Direct Commercial Sales (DCS). The proposed sale will include 60 Active Electronically Scanned Array Radar (AESA) radar sets, 60 Digital Electronic Warfare Systems (DEWS), 60 AN/AAQ–33 Sniper Targeting Systems, 60 AN/AAS–42 Infrared Search and Track (IRST) Systems, 132 Ultra High Frequency/Very High Frequency (UHF/VHF) secure radio with HAVE QUICK II, 69 Link-16 Terminals and spares, the Advanced Display Core Processor II, Joint Mission Planning System, various support equipment items, GEM–V GPS airborne receiver module, and communication security; software development/integration, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contract engineering and logistical personnel services, and other related elements of logistics and program support. The estimated cost is $2.408 billion.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner nation. The Republic of Korea continues to be an important force for peace, political stability, and economic progress in North East Asia.

The proposed sale will augment Korea's operational aircraft inventory and enhance its air-to-air and air-to-ground self-defense capability, provide it with a credible defense capability to deter aggression in the region, and ensure interoperability with U.S. forces. The Republic of Korea Air Force's F–4 aircraft will be decommissioned as F–15SEs are added to the inventory. Korea will have no difficulty absorbing this additional equipment and support into its inventory.

The proposed sale of equipment and support will not negatively alter the basic military balance in the region.

Implementation of this proposed sale will require multiple trips to Korea involving U.S. Government and contractor representatives for technical reviews and support, program management, and training over a period of 15 years.

The prime contractor will be The Boeing Corporation in St Louis, Missouri. This proposal is being offered in the context of a competition. If the proposal is accepted, it is expected that offset agreements will be required.

There will be no adverse impact on U.S. defense readiness resulting from this proposed sale.

Transmittal No. 13–11

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. This Direct Commercial Sale (DCS)/Foreign Military Sale (FMS) Hybrid sale will involve the release of sensitive technology to the Republic of Korea (ROK). The F–15SE weapons system is classified up to Secret. The F–15SE aircraft (DCS) uses the F–15E airframe and features advanced avionics and other technologically sensitive systems. The F-l5SE will contain the General Electric F110–GE–129E engine (DCS), AN/APG–63(v)3 Active Electronically Scanned Array (AESA) radar (FMS), internal and external electronic warfare and self-protection equipment (FMS), Identification Friend or Foe (IFF) system (FMS), operational flight program, and software computer programs.

2. Sensitive and/or classified (up to Secret) elements of the proposed F–15SE include hardware, accessories, components, and associated software: APG–63(v)3 AESA, Digital Electronic Warfare Suite (DEWS), the AN/AAQ–33 SNIPER targeting system, Infrared Search and Track system (IRST), Link-16 Terminals, and Ultra High Frequency Very High Frequency (UHF/VHF) secure radio. Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and other similar critical information.

3. The Active Electronically Scanned Array (AESA) radar is the latest model of the F–15E radar. This model contains digital technology, including high processor and transmitter power, sensitive receiver electronics, and Synthetic Aperture Radar (SAR), which creates high resolution radar ground maps. This radar also incorporates Non Cooperative Threat Recognition (NCTR) to aid in aircraft identification. The complete hardware is classified Confidential; major components and subsystems are classified Confidential; software is classified Secret; and technical data and documentation are classified up to Secret.

4. The Digital Electronic Warfare Suite (DEWS) provides passive radar warning, wide spectrum RF jamming,

and control and management of the entire EW system. It is an internally mounted suite. The commercially developed system software and hardware is Unclassified. The system is classified Secret when loaded with a U.S. derived EW database.

5. The AN/AAQ–33 SNIPER Targeting System is Unclassified but contains technology representing the latest state-of-the-art in several areas. This pod is a third generation infrared and electro-optical pod capable of full motion video downlink. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Confidential. Sensitive elements include the forward looking infrared (FLIR) sensors, and Electronic Counter Countermeasures features that increase capability in a jamming environment.

6. The AN/AAS–42 Infrared Search and Track (IRST) system is a long-wave, high resolution, passive, infrared sensor system that searches and detects heat sources within its field of regard. The AN/AAS–42 is classified Confidential, components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

7. Link-16 command, control, communications, and intelligence (C3I) system incorporating high capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

8. The Ultra High Frequency/Very High Frequency (UHF/VHF) secure radio with HAVE QUICK II is voice communications radio system that can operate in either normal, secure, and/or jam resistant modes. It can employ cryptographic technology that is classified Secret. Classified elements include operating characteristics, parameters, technical data, and keying material.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–09096 Filed 4–17–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0055]

Agency Information Collection Activities; Comment Request; Financial Report for the Endowment Challenge Grant Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 17, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0055 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Financial Report for the Endowment Challenge Grant Program.

OMB Control Number: 1840–0564.

Type of Review: an extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 2,500.

Total Estimated Number of Annual Burden Hours: 3,125.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Annual Financial Report is to have the grantees report annually the kind of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Dated: April 15, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09151 Filed 4–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0056]

Agency Information Collection Activities; Comment Request; IEPS International Resource Information System (IRIS)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 17, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0056 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IEPS International Resource Information System (IRIS).

OMB Control Number: 1840–0759.

Type of Review: a revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 6,754.

Total Estimated Number of Annual Burden Hours: 13,439.

Abstract: This is a re-clearance of the on-line reporting system, International Resource Information System (IRIS) that IFLE uses to collect annual performance reports from Title VI and Fulbright-Hays grantees. The system is also used by IFLE to disseminate program information to the public.

Dated: April 15, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–09152 Filed 4–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Center on Dispute Resolution

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

ACTION: Notice.

Overview Information:

Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities—Center on Dispute Resolution.

Notice inviting applications for a new award for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326X.

DATES:

Applications Available: April 18, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Deadline for Intergovernmental Review: August 1, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance, supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1463 and 1481(d)).

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Center on Dispute Resolution.

Background:

IDEA includes procedural safeguards that are designed to protect the rights of children with disabilities and their parents and to provide parents with mechanisms for resolving, at the earliest point in time, disputes with those who provide services to children with disabilities (State educational agencies (SEAs), local educational agencies (LEAs), schools, Part C State lead agencies, and early intervention service (EIS) providers). The procedural safeguards include the opportunity to seek a timely resolution of disputes about any matter relating to the provision of a free appropriate public education to an eligible child or of appropriate early intervention services to infants and toddlers with disabilities. Thus, IDEA encourages constructive relationships between parents of children with disabilities and those who provide services to children with disabilities by facilitating open communication between the parents and these entities and encouraging early resolution of disputes so that disagreements do not escalate and become adversarial. IDEA's dispute resolution procedures include provisions for State complaints, mediation, due process complaints and due process hearings, and resolution sessions, as described below.

State Complaints. IDEA's State complaint procedures permit parents and other interested individuals or organizations to file a complaint with the SEA or Part C State lead agency to seek resolution of any alleged violations of IDEA. The goal of the State complaint procedures is to resolve disputes while avoiding costly or time consuming due process hearings (71 FR 46600—Part B regulations; 76 FR 60214–60216—Part C regulations). The State complaint procedures provide an important means of ensuring that the educational or early intervention needs of children with disabilities are met (71 FR 46601; 76 FR 60214–60216).

Mediation. In response to increasing numbers of due process hearing requests, Congress amended IDEA in 1997 to require SEAs and Part C State lead agencies to make mediation available, at a minimum, whenever a request for a due process hearing is made. In 2004, Congress amended section 615(e) of IDEA to allow parties to use mediation to resolve disputes involving *any* matter under IDEA, not just those matters that are the subject of a due process complaint. (This amendment also applies to Part C through section 639(a)(8) of IDEA). In mediation, a neutral third party facilitates the resolution of disputes. Mediation is more likely than due process hearings to foster positive relationships between families and educators (U.S. Government Accountability Office, 2003).

Due Process Hearings. In due process hearings, an impartial, knowledgeable decision-maker resolves disputes. While due process hearings are an important protection, they can be costly, time consuming, and contentious, and they may damage relationships between the parties involved in the dispute.

Resolution Session. The 2004 amendments to IDEA added a requirement for a resolution session prior to a due process hearing. The resolution session requirement applies to all IDEA Part B due process hearing requests and to those IDEA Part C due process hearing requests filed in a State that has elected to adopt the Part B-type due process hearing procedures in 34 CFR 303.440 through 303.449. Under section 615(f)(1)(B) of IDEA, the LEA (or in the case of IDEA Part C, under 34 CFR 303.442, the State lead agency) must convene a meeting with the parents and relevant members of the child's individualized education program (IEP) or individualized family service plan (IFSP) team who have specific knowledge of the facts identified in the complaint. This provides the parents and the agency with an opportunity to resolve the complaint and avoid a due process hearing.

Early Resolution Practices. In addition to these methods of dispute resolution specifically required under IDEA, there are a variety of informal or ''early resolution'' practices that can be used to resolve disputes at the school or district level and avoid time-consuming and costly litigation (U.S. Government Accountability Office, 2003). In the preamble to the 2006 final regulations implementing Part B of IDEA, the Department encouraged States to explore the use of early resolution practices to facilitate the timely resolution of disputes and to preserve the relationships between families and educators (71 FR 46540, 46604).

Over the past seven years, data from State Performance Plans (SPPs) and Annual Performance Reports (APRs) submitted to the Office of Special Education Programs (OSEP) show a steady decline in the number of IDEA Part B due process hearings held across the country, down 68 percent since FY 2004. At the same time, SEAs and Part C State lead agencies are reporting an increase in the use of informal early resolution practices that have been shown to reduce the need for dispute resolution and facilitate early resolution of disputes. Examples of early resolution practices include training in conflict resolution, which is designed to equip individuals with skills to better communicate and negotiate their positions and interests, (Henderson, 2008), and IEP and IFSP facilitation.

Since 1998, OSEP has funded a technical assistance (TA) center to support States' implementation of timely and effective dispute resolution processes. (For further information on the work of the current center, please see the following Web site: *www.directionservice.org/cadre.*) The current center's funding will end in FY 2013.

The Department believes it is important to continue to fund a TA center that provides SEAs and Part C State lead agencies with resources that can help them effectively implement a range of dispute resolution options to ensure that the trend toward early, less costly, and less adversarial dispute resolution continues. SEAs and Part C State lead agencies also need information on how to collect and use data from dispute resolution systems to improve compliance with IDEA requirements. In addition, continued funding of a TA center on dispute resolution that works directly with OSEP-funded parent technical assistance centers (PTACs) will help ensure that parents and families have access to information on how to resolve their disagreements in positive and constructive ways.

Priority:

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Center on Dispute Resolution designed to produce, at a minimum, the following outcomes: (1) An increased capacity of SEAs and Part C State lead agencies to support local implementation of effective early resolution practices to resolve disputes and thereby decrease requests for State complaints and due process hearings; (2) an increased body of knowledge on strategies for collecting, reporting, and using high-quality data on dispute resolution; (3) an increased body of knowledge on exemplary practices for parents and families to resolve disputes in positive and constructive ways; (4) an improved ability of SEAs and Part C State lead agencies to implement a range of dispute resolution options, including methods of dispute resolution required under IDEA and early resolution practices; (5) an improved capacity of OSEP-funded PTACs to provide technical assistance to OSEP-funded parent centers on the range of effective dispute resolution options; and (6) an analysis of current information on State and national trends and other data about dispute resolution to determine the extent to which SEAs and Part C State lead agencies have: (a) Met the required timelines when resolving State complaints and issuing due process hearing decisions; (b) used resolution meetings and mediation to successfully resolve disputes between parents and LEAs or EIS providers; and (c) implemented effective methods of early dispute resolution.

In addition to these programmatic requirements, to be considered for funding under this absolute priority, applicants must meet the application and administrative requirements contained in this priority. OSEP encourages innovative approaches to meet these requirements, which are as follows:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will—

(1) Address the training and information needs of SEAs, Part C State lead agencies, and parents and families to resolve disputes arising from programs under Part B and Part C of IDEA. To address this requirement the applicant must—

(i) Present applicable national and State data demonstrating the training and information needs of SEAs, Part C State lead agencies, and parents and families to resolve disputes;

(ii) Demonstrate knowledge of current educational issues and policy initiatives in dispute resolution (e.g., the implementation and effectiveness of IEP/IFSP facilitation); and

(iii) Present information about the implementation and effectiveness of current dispute resolution systems in SEAs and Part C State lead agencies.

(2) Result in early resolution of disputes and improved compliance with IDEA dispute resolution requirements.

(b) Demonstrate, in the narrative section of the application under

''Quality of the Project Services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups (e.g., race, color, national origin, language, linguistic background, gender, age, or disability) that traditionally have not engaged in, or have been underrepresented in accessing, dispute resolution options. To meet this requirement, the applicant must describe the process that will be used to—

(i) Identify the needs of the intended recipients (i.e., SEAs, Part C State lead agencies, and PTACs) for technical assistance and information; and

(ii) Ensure that services and products meet the needs of the intended recipients (e.g., creating materials in formats and languages accessible to the stakeholders served by the intended recipients).

(2) Meet its goals, objectives, and outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The theory of action (i.e., a logic model) on how the proposed project will achieve the project outcomes.

(3) Use a conceptual framework to guide the development of project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationship or linkages among these variables, and any empirical support for this framework;

(4) Be based on current research and evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research on the effectiveness of dispute resolution options and practices;

(ii) The current research about adult learning principles and how this information will be used to provide training and technical assistance to the intended recipients on implementing effective dispute resolution systems; and

(iii) The process the proposed project will use to incorporate current research and evidence-based practices in the development and delivery of its products and services.

(5) Develop products and provide services that are of sufficient quality, intensity, and duration to achieve the outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed activities to identify and expand the knowledge base in dispute resolution and early resolution practices;

(ii) Its proposed approach to universal, general TA,[1] including the intended recipients of the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[2] including the intended recipients of the products and services under this approach and its proposed approach to measure the readiness of potential TA recipients to work with the project, including their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[3] including the intended recipients of the products and services under this approach. To address this requirement, the applicant must describe—

(A) Its proposed plan for assisting SEAs, Part C State lead agencies, and PTACs to build training systems that include professional development based on evidence-based adult learning principles and coaching; and

(B) Its proposed plan for supporting SEAs, Part C State lead agencies, and PTACs in their work with hearing officers, IEP/IFSP Team facilitators, or other dispute resolution personnel, as well as families and personnel at each level of the education or early intervention system (e.g., regional TA providers, school districts, schools, service coordinators, and related service and EIS providers and personnel), to ensure that there is effective communication among these groups and that there are systems in place to support the use of a range of dispute resolution procedures and practices.

(6) Develop products and implement services to maximize the efficiency of an SEA's or Part C State lead agency's dispute resolution system. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will leverage non-project resources to achieve the proposed project outcomes.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how—

(1) The proposed project will collect and analyze data related to specific and measurable goals, objectives, and outcomes of the project. To address this requirement, the applicant must describe—

(i) Proposed evaluation methodologies, including instruments, data collection methods, and possible analyses;

(ii) Proposed standards or targets for determining effectiveness; and

(iii) Proposed methods for collecting data on implementation supports and fidelity of implementation.

(2) The proposed project will use the evaluation results to examine the effectiveness of the project's implementation strategies and the progress toward achieving intended outcomes; and

(3) The methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, language/linguistic background, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

[1] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[2] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[3] ''Intensive, sustained TA'' means TA services often provided onsite and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. TA services are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as appropriate; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors who will be allocated to the project and the appropriateness and adequacy of these time allocations to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including families, EIS providers, educators, related service providers, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Meet the following program requirements—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *232www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/model_and_performance;*

(2) Include in Appendix A a visual representation of the conceptual framework, if a visual representation is developed;

(3) Include in Appendix A a person-loading chart and timelines, as appropriate, to illustrate the management plan described in the narrative;

(4) Include in the budget attendance at the following:

(i) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) Two, two-day trips annually to present at Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive review meeting that will be held during the last half of the second year of the project period.

(5) Include in the budget a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's activities and products and the degree to which the project's activities and products are aligned with the project's objectives and likely to result in the project achieving its proposed outcomes.

References:

Henderson, K. (2008, May). Optional IDEA alternative dispute resolution. Project Forum at the National Association of State Directors of Special Education (NASDSE) and Consortium for Appropriate Dispute Resolution in Special Education (CADRE). Retrieved from: *www.projectforum.org/docs/OptionalIDEAAlternativeDisputeResolution.pdf.*

U.S. Government Accountability Office. (2003, September). Special education: Numbers of formal disputes are generally low and States are using mediation and other strategies to resolve conflicts. Publication No. GAO–03–897. Retrieved from: *www.gao.gov/new.items/d03897.pdf.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $650,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with an optional additional 24 months based on performance. Applications must include plans for both the 36-month award and the 24-month extension.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other General Requirements:* (a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326X.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 18, 2013.

Deadline for Transmittal of Applications: June 3, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 1, 2013.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR or SAM registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Center on Dispute Resolution competition, CFDA number 84.326X, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Center on Dispute Resolution at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326X).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tina Diamond, U.S. Department of Education, 400 Maryland Avenue SW., room 4094, Potomac Center Plaza (PCP), Washington, DC 20202–2600. FAX: (202) 245–7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326X), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326X), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the

necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tina Diamond, U.S. Department of Education, 400 Maryland Avenue SW., Room 4094, PCP, Washington, DC 20202–2600. Telephone: (202) 245–6674.

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

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: April 12, 2013.

Michael Yudin,

Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Education and Rehabilitative Services.

[FR Doc. 2013–09160 Filed 4–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the *Federal Register.*

DATES: Wednesday, May 8, 2013, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@emor.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation on the National Environmental Management Program
- Additions/Approval of Agenda
- Motions/Approval of April 10, 2013 minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on April 15, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–09130 Filed 4–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy .

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

DATES: Friday, May 3, 2013; 9:00 a.m.—12:30 p.m.

ADDRESSES: National Academy of Sciences (in the Lecture Room), 2101 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Knatokie Ford by email at: *kford@ostp.eop.gov,* or telephone: (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and, Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on May 3, 2013 from 9:00 a.m. to 12:30 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on Administration research initiatives in neuroscience and technology's impact on productivity and employment. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on May 3, 2013, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on May 3, 2013, at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at: *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. (EST) on April 26, 2013. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (EST) on April 26, 2013, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Knatokie Ford at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC on April 12, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–09126 Filed 4–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meetings.

SUMMARY: This notice announces two meetings of the National Coal Council (NCC). The Federal Advisory Committee

Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 16, 2013, 4:00 p.m. to 5:00 p.m. Friday, May 17, 2013, 9:00 a.m. to 12:00 p.m.

ADDRESSES: Fairmont Hotel, 2401 M Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Wright, U.S. Department of Energy, 4G–036/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 202–586–0429.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To conduct normal Council business and receive presentations:

Agenda for Thursday, May 16, 2013

1. Call to Order by John Eaves, Chairman, National Coal Council
2. Council Business
   a. Acceptance of the 2012 Council Audit Report
   b. Action on updating the Council by-laws
   c. Report on possible legislative amendments to the Federal Advisory Committee Act (FACA)
   d. Staff Change Announcement
3. Other business
4. Adjourn

Agenda for Friday, May 17, 2013

1. Call to order and opening remarks by John Eaves, Chairman, National Coal Council,
2. Remarks by Chris Smith, Acting Assistant Secretary for Fossil Energy, Department of Energy
3. Presentation of summary of recent Council studies by Fred Palmer, Chair, Coal Policy Committee
4. Presentation by General Keith Alexander on ''Cyber Security in the U.S.'' (invited)
5. Presentation by Don Newell (KY Department for Natural Resources) and Fred Moore (Nuclear Alliance) on nuclear-enhanced coal-to-liquid fuels production
6. Council Business:
   a. Communications Committee report by Chair David Surber
   b. Finance report by Finance Committee Chair Greg Workman
7. Other business
8. Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Council, you may do so either before or after the meeting. If you would like to make oral statements regarding any item on the agenda, you should contact Dr. Robert J. Wright, 202–586–0429 or *robert.wright@hq.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include oral statements on the scheduled agenda. The Chairperson of the Council will lead the meeting in a manner that facilitates the orderly conduct of business. Oral statements are limited to 10-minutes per organization and per person.

Minutes: Within 45 days, a complete transcript of both meetings will be posted on the NCC's Web site at: *http://www.nationalcoalcouncil.org/*.

Issued at Washington, DC on April 12, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–09129 Filed 4–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–26–000
Applicants: BayWa r.e. Mozart, LLC
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BayWa r.e. Mozart, LLC.
Filed Date: 4/10/13
Accession Number: 20130410–5093
Comments Due: 5 p.m. ET 5/1/13

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2794–012; ER10–2849–011; ER11–2028–012; ER12–1825–010; ER11–3642–010
Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC, Tanner Street Generation, LLC
Description: Notice of Change in Status of EDF Trading North America, LLC, et al.
Filed Date: 4/11/13
Accession Number: 20130411–5015
Comments Due: 5 p.m. ET 5/2/13
Docket Numbers: ER11–3551–000; *ER11–3822–000; ER11–3553–000 ER11–3554–000; ER11–3824–000*
Applicants: Glacial Energy of New York
Description: Second Revised Refund Report of Glacial Energy of New York, et al.
Filed Date: 4/10/13
Accession Number: 20130410–5157
Comments Due: 5 p.m. ET 5/1/13
Docket Numbers: ER12–668–002
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 2013–04–11 ELMP to be effective 12/31/9998.
Filed Date: 4/11/13
Accession Number: 20130411–5077
Comments Due: 5 p.m. ET 4/19/13

Docket Numbers: ER13–1258–000
Applicants: Land O'Lakes, Inc.
Description: Initial Tariff Baseline to be effective 6/14/2013.
Filed Date: 4/11/13
Accession Number: 20130411–5039
Comments Due: 5 p.m. ET 5/2/13

Docket Numbers: ER13–1259–000
Applicants: New England Power Pool Participants Committee, ISO New England Inc.
Description: Regulation Market Opportunity Cost Change to be effective 7/1/2013.
Filed Date: 4/11/13
Accession Number: 20130411–5057
Comments Due: 5 p.m. ET 5/2/13

Docket Numbers: ER13–1260–000
Applicants: Niagara Mohawk Power Corporation
Description: National Grid USA on behalf of its subsidiary Niagara Mohawk Power Corporation submits Motion for Expedited Consideration and Limited Tariff Waiver.
Filed Date: 4/11/13
Accession Number: 20130411–5059
Comments Due: 5 p.m. ET 4/22/13
Docket Numbers: ER13–1261–000
Applicants: Tampa Electric Company
Description: Rate Schedule No. 97 with Seminole Electric Cooperative, Inc. to be effective 8/31/2012.
Filed Date: 4/11/13
Accession Number: 20130411–5066
Comments Due: 5 p.m. ET 5/2/13

Docket Numbers: ER13–1262–000
Applicants: Tampa Electric Company
Description: Rate Schedule No. 98 with Florida Power Corporation to be effective 8/31/2012.
Filed Date: 4/11/13
Accession Number: 20130411–5067
Comments Due: 5 p.m. ET 5/2/13

Docket Numbers: ER13–1263–000
Applicants: New England Power Company
Description: National Grid USA on behalf of its subsidiary New England Power Company submits Motion for Expedited Consideration and Limited Tariff Waiver.
Filed Date: 4/11/13
Accession Number: 20130411–5074
Comments Due: 5 p.m. ET 4/22/13

Docket Numbers: ER13–1264–000

Applicants: Southwest Power Pool, Inc.
Description: 2221R1 Prairie Breeze Wind Energy, LLC. GIA to be effective 3/22/2013.
Filed Date: 4/11/13
Accession Number: 20130411–5102
Comments Due: 5 p.m. ET 5/2/13

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA98–13–001
Applicants: City Utilities of Springfield, Missouri
Description: Notice of Material Change and Plan to Relinquish Waiver of City Utilities of Springfield, MO.
Filed Date: 4/10/12
Accession Number: 20120410–5169
Comments Due: 5 p.m. ET 5/2/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09102 Filed 4–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–584–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Settlement Refund Report—RP12–1021 & RP13–584.
Filed Date: 4/10/13.
Accession Number: 20130410–5105.
Comments Due: 5 p.m. ET 4/22/13.

Docket Numbers: RP13–789–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendment to Neg Rate Agmt (Devon 34694–48) to be effective 4/9/2013.
Filed Date: 4/9/13.
Accession Number: 20130409–5095.
Comments Due: 5 p.m. ET 4/22/13.

Docket Numbers: RP13–790–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 04/10/13 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 4/15/2013.
Filed Date: 4/10/13.
Accession Number: 20130410–5090.
Comments Due: 5 p.m. ET 4/22/13.

Docket Numbers: RP13–791–000.
Applicants: Equitrans, L.P.
Description: Compliance Filing—2013 Settlement to be effective 4/1/2013.
Filed Date: 4/10/13.
Accession Number: 20130410–5111.
Comments Due: 5 p.m. ET 4/22/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09100 Filed 4–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Docket Numbers: EC13–85–000.
Applicants: BIV Generation Company, L.L.C., Colorado Power Partners, Rocky Mountain Power, LLC, San Joaquin Cogen, LLC.
Description: Errata to March 23, 2013 Application (Public Version) for Authorization for Disposition of Jurisdictional Facilities of BIV Generation Company, L.L.C., *et al.*
Filed Date: 3/27/13.
Accession Number: 20130327–5154.
Comments Due: 5 p.m. ET 4/17/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1707–002; ER11–3623–001; ER11–3460–003.
Applicants: Hess Corporation, Hess Small Business Services LLC, Bayonne Energy Center, LLC.
Description: Second supplement to January 24, 2013 Notice of Change in Status of Hess Corporation, *et al.*
Filed Date: 4/8/13.
Accession Number: 20130408–5200.
Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: ER11–3401–008.
Applicants: Golden Spread Panhandle Wind Ranch, LLC.
Description: Amendment to December 31, 2012 Golden Spread Panhandle Wind Ranch, LLC Updated Market Power Analysis for Southwest Power Pool, Inc. Region.
Filed Date: 4/9/13.
Accession Number: 20130409–5173.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER11–3576–008.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Updated Market Power Analysis—Revision to be effective 12/28/2012.
Filed Date: 4/9/13.
Accession Number: 20130409–5158.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER12–2448–004.
Applicants: Chisholm View Wind Project, LLC.
Description: Chisholm View Wind Project, LLC MBR Tariff to be effective 9/15/2012.
Filed Date: 4/9/13.
Accession Number: 20130409–5148.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER13–1180–000.
Applicants: PacifiCorp.
Description: PacifiCorp Energy Carbon Decommissioning Construction Agmt Supplemental Filing to be effective N/A.
Filed Date: 4/10/13.
Accession Number: 20130410–5055.
Comments Due: 5 p.m. ET 5/1/13.

Docket Numbers: ER13–1248–000.
Applicants: PATUA PROJECT LLC.
Description: Supplemental to April 4, 2013 PATUA PROJECT LLC tariff filing.
Filed Date: 4/10/13.
Accession Number: 20130410–5087.
Comments Due: 5 p.m. ET 5/1/13.

Docket Numbers: ER13–1249–000.
Applicants: MYOTIS POWER MARKETING LLC.
Description: Supplemental to April 4, 2013 MYOTIS POWER MARKETING LLC tariff filing.
Filed Date: 4/10/13.
Accession Number: 20130410–5083.
Comments Due: 5 p.m. ET 5/1/13.

Docket Numbers: ER13–1255–000.
Applicants: The Narragansett Electric Company.
Description: Interconnection Agreement Between Narragansett Electric Co. and Pawtucket to be effective 4/9/2013.
Filed Date: 4/9/13.
Accession Number: 20130409–5142.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER13–1256–000.
Applicants: The Narragansett Electric Company.
Description: Interconnection Agreement Between Narragansett Electric Co. and Pontiac to be effective 6/9/2013.
Filed Date: 4/9/13.
Accession Number: 20130409–5160.
Comments Due: 5 p.m. ET 4/30/13.

Docket Numbers: ER13–1257–000.
Applicants: New England Power Pool Participants Committee, ISO New England Inc.
Description: Rev. to ISO–NE FAP and ISO–NE Bill. Pol. Rel. to Mod. DA Eng. Mkt. to be effective 5/15/2013.
Filed Date: 4/10/13.
Accession Number: 20130410–5054.
Comments Due: 5 p.m. ET 4/25/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 10, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09101 Filed 4–17–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9789–7]

FY2013 Supplemental Funding for Brownfields Revolving Loan Fund (RLF) Grantees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the Availability of Funds.

SUMMARY: EPA's Office of Brownfields and Land Revitalization (OBLR) plans to make available approximately $6 million to provide supplemental funds to Revolving Loan Fund capitalization grants previously awarded competitively under section 104(k)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9604(k)(3). Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots awarded under section 104(d)(1) of CERCLA that have not transitioned to section 104(k)(3) grants are not eligible to apply for these funds. EPA will consider awarding supplemental funding only to RLF grantees who have demonstrated an ability to deliver programmatic results by making at least one loan or subgrant. The award of these funds is based on the criteria described at CERCLA 104(k)(4)(A)(ii) .

The Agency is now accepting requests for supplemental funding from RLF grantees. Requests for funding must be submitted to the appropriate EPA Regional Brownfields Coordinator (listed below) by May 20, 2013. Funding requests for hazardous substances and/or petroleum funding will be accepted. Specific information on submitting a request for RLF supplemental funding is described below and additional information may be obtained by contacting the EPA Regional Brownfields Coordinator.

DATES: This action is effective April 18, 2013.

ADDRESSES: A request for supplemental funding must be in the form of a letter addressed to the appropriate Regional Brownfields Coordinator (see listing below) with a copy to Ted Lanzano, *lanzano.ted@epa.gov* or U.S. EPA Region 8 (EPR–AR), 1595 Wynkoop Street, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Ted Lanzano, U.S. EPA, (303) 312–6596 or the appropriate Brownfields Regional Coordinator.

SUPPLEMENTARY INFORMATION:

Background

The Small Business Liability Relief and Brownfields Revitalization Act added section 104(k) to CERCLA to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup and job training. Section 104(k) includes a provision for the EPA to, among other things, award grants to eligible entities to capitalize Revolving Loan Funds and to provide loans and subgrants for brownfields cleanup. Section 104(k)(4)(A)(ii) authorizes EPA to make additional grant funds available to RLF grantees for any year after the year for which the initial grant is made (noncompetitive RLF supplemental funding) taking into consideration:

(I) The number of sites and number of communities that are addressed by the revolving loan fund;

(II) The demand for funding by eligible entities that have not previously received a grant under this subsection;

(III) The demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

(IV) Such other similar factors as the [Agency] considers appropriate to carry out this subsection.

Eligibility

In order to be considered for supplemental funding, grantees must demonstrate that they have expended existing funds and that they have a clear plan for quickly expending requested additional funds. Grantees must demonstrate that they have made at least one loan or subgrant prior to applying for this supplemental funding and have significantly depleted existing available funds. For FY2013, EPA defines ''significantly depleted funds'' as any grant where $250,000–$300,000 or less remains uncommitted for single entities and $300,000–$400,000 or less remains uncommitted for states/large coalitions. Additionally, the RLF recipient must have demonstrated a need for supplemental funding based on, among other factors, the number of sites that will be addressed; demonstrated the ability to make loans and subgrants for cleanups that can be started and completed expeditiously (i.e., ''shovel-ready'' projects) and will lead to redevelopment; demonstrated the existence of additional leveraged funds to complete the project in a timely manner and move quickly from cleanup to redevelopment, including the use of tax incentives such as new market tax credits, direct funding or other resources to advance the project to completion; demonstrated the ability to administer and revolve the capitalization funding in the RLF grant; demonstrated an ability to use the RLF grant to address funding gaps for cleanup; and demonstrated that they have provided a community benefit from past and potential loan(s) and/or subgrant(s). Special consideration may be given to those communities affected by plant closures or other economic disruptions. Special consideration may also be given to those grantees that can demonstrate projects that have a clear prospect of aiding the in-sourcing of manufacturing capacity and keeping and/or adding jobs, or otherwise creating jobs, in the affected area. Applicants for supplemental funding must contact the appropriate Regional Brownfields Coordinator below to obtain information on the format for supplemental funding applications for their region. When requesting supplemental funding, applicants must specify whether they are seeking funding for sites contaminated by hazardous substances or petroleum. Applicants may request both types of funding.

REGIONAL CONTACTS

Region	States	Address/phone no./email
EPA Region 1, Diane Kelley, *Kelley.Diane@epa.gov*.	CT, ME, MA, NH, RI, VT	5 Post Office Square, Boston, MA 02109–3912, Phone (617) 918–1424 Fax (617) 918–1291.
EPA Region 2, Benny Hom, *Hom.Benny@epa.gov*.	NJ, NY, PR, VI	290 Broadway, 18th Floor, New York, NY 10007, Phone (212) 637–3964 Fax (212) 637–3083.
EPA Region 3, Tom Stolle, *Stolle.Tom@epa.gov*.	DE, DC, MD, PA, VA, WV ..	1650 Arch Street, Mail Code 3HS51, Philadelphia, Pennsylvania 19103, Phone (215) 814–3129 Fax (215) 814–5518.
EPA Region 4, Phil Vorsatz, *Vorsatz.Philip@epa.gov*.	AL, FL, GA, KY, MS, NC, SC, TN.	Atlanta Federal Center, 61 Forsyth Street SW., 10th FL, Atlanta, GA 30303–8960, Phone (404) 562–8789 Fax (404) 562–8439.
EPA Region 5, Deborah Orr, *Orr.Deborah@epa.gov*.	IL, IN, MI, MN, OH, WI	77 West Jackson Boulevard, Mail Code SE–4J, Chicago, Illinois 60604–3507, Phone (312) 886–7576 Fax (312) 886–7190.
EPA Region 6, Mary Kemp, *Kemp.Mary@epa.gov*.	AR, LA, NM, OK, TX	1445 Ross Avenue, Suite 1200 (6SF–PB), Dallas, Texas 75202–2733, Phone (214) 665–8358 Fax (214) 665–6660.
EPA Region 7, Susan Klein, *Klein.Susan@epa.gov*.	IA, KS, MO, NE	11201 Renner Blvd, Lenexa, Kansas 66219, Phone (913) 551–7786 Fax (913) 551–8688.
EPA Region 8, Dan Heffernan, *Heffernan.Daniel@epa.gov*.	CO,MT, ND, SD, UT, WY ...	1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–7074 Fax (303) 312–6065.
EPA Region 9, Noemi Emeric-Ford, *Emeric-Ford.Noemi@epa.gov*.	AZ, CA, HI, NV, AS, GU	75 Hawthorne Street, WST–8, San Francisco, CA 94105, Phone (213) 244–1821 Fax (415) 972–3364.
EPA Region 10, Susan Morales, *Morales.Susan@epa.gov*.	AK, ID, OR, WA	1200 Sixth Avenue, Suite 900, Mailstop: ECL–112 Seattle, WA 98101, Phone (206) 553–7299 Fax (206) 553–0124.

Dated: April 11, 2013.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. 2013–09050 Filed 4–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9804–4]

Meeting of the Environmental Financial Advisory Board; Public Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold a public meeting on May 15–16, 2013. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

The purpose of this meeting is to hear from informed speakers on environmental finance issues, proposed legislation, and EPA priorities; to discuss activities and progress with regard to current EFAB work projects; and to consider recent requests for assistance from EPA offices.

Environmental finance discussions are expected on the following topics: clean air technology; tribal environmental programs; transit-oriented development in sustainable communities, energy efficiency/green house gas emissions reduction; drinking water pricing and infrastructure investment; and green infrastructure.

The meeting is open to the public; however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Friday, May 3, 2013.

DATES: The full board meeting will be held on Wednesday, May 15, 2013 from 1:30 p.m. to 5 p.m., Eastern Time and Thursday, May 16, 2013 from 9–5 p.m., Eastern Time.

ADDRESSES: Potomac Yard Two, North Entrance, Room 4120, 2733 Crystal Drive, Arlington, VA 22202.

Registration and Information Contact: To register, get additional information and for information on access or services for individuals with disabilities, please contact Sandra Williams, U.S. EPA, at (202) 564–4999 or *williams.sandra@epa.gov*. Request for accommodations for individuals with disabilities should be made 10 days prior to the meeting, to allow processing time of your request.

Dated: April 12, 2012.

Joseph L. Dillon,

Director, Center for Environmental Finance.

[FR Doc. 2013–09159 Filed 4–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9804–8]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; BASF Corporation Freeport, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste

Amendments to the Resource Conservation and Recovery Act, has been granted to BASF Corporation for three Class I injection wells located at Freeport, Texas. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by BASF, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection wells WDW–51 and WDW–99 and WDW–408 until December 31, 2028, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued December 27, 2012. The public comment period closed on February 15, 2013. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of February 21, 2013.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: April 9, 2013.

William K. Honker,

Division Director, Water Quality Protection Division.

[FR Doc. 2013–09158 Filed 4–17–13; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Policy Statement Concerning Assistance

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation or FCSIC) announces that it has given final approval to a new ''Policy Statement Concerning Assistance,'' which replaces the Corporation's existing ''Policy Statement Concerning Stand-Alone Assistance.'' The new policy statement provides additional transparency concerning the Corporation's authority to provide assistance and how the least-cost test might be performed. This policy statement also includes enhanced criteria of what is to be included in assistance proposals, and a new section discussing assistance agreements.

DATES: *Effective Date:* The policy statement is effective on April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Wade Wynn, Senior Risk Analyst, and James M. Morris, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4390.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation, in its sole discretion, is authorized under section 5.61(a) of the Farm Credit Act of 1971, as amended (Act),[1] to provide assistance to a stand-alone Farm Credit System (System) institution or to facilitate a merger or consolidation of a System institution with another System institution,[2] provided it meets the statutory least-cost test.[3] If the Corporation receives a request to assist a troubled System institution, it must compare the cost of liquidation to the cost of providing assistance to determine the least costly alternative to the Farm Credit Insurance Fund (Insurance Fund). In making this discretionary determination, the Corporation is authorized under section 5.59(b) of the Act[4] to gather any information necessary from the troubled System institution or any other System institution to perform the least-cost test. After gathering pertinent information, the Corporation must: (1) Evaluate alternatives on a present-value basis, using a reasonable discount rate, (2) document the evaluation and the assumptions on which the evaluation is based, and (3) retain the documentation for not less than 5 years.

The Corporation's ''Policy Statement Concerning Stand-Alone Assistance'' is, for the most part, a summary of the powers of the Corporation under section 5.61(a) of the Act to provide assistance to a troubled System institution, including the timing and steps for making the least-cost test.[5] For example, the policy specifies that the Corporation's Board of Directors must determine that providing assistance is the least costly means of all possible alternatives available to the Corporation, including liquidation of the troubled System institution, and lists the steps for conducting the statutory least-cost test. The existing policy statement also provides a list of criteria of what the Corporation expects to receive in assistance proposals to help the Corporation conduct the least-cost test.

II. Comments on the Draft Policy Statement

On June 21, 2012, the Corporation published for comment a draft ''Policy Statement Concerning Assistance to Troubled Farm Credit System Institutions'' to replace the Corporation's existing ''Policy Statement Concerning Stand-Alone Assistance.''[6] The Corporation received two comment letters on the draft policy statement. In brief, both commenters are concerned that the Corporation will not consider a request for assistance until after all other resolution alternatives are exhausted, including resolution alternatives available to the Farm Credit Administration (FCA). Both also commented on the least-cost test as it relates to the cost of liquidating a troubled System institution. Each of these areas is addressed below.

A. Resolution Alternatives

In the first sentence of the draft policy statement, the Corporation stated that, in general, it would consider a request for assistance after other resolution alternatives have been exhausted such as voluntary assistance provided from within the System, voluntary merger with one or more System institutions, or involuntary merger with one or

[1] 12 U.S.C. 2277a–10.

[2] Section 5.61(a) of the Act uses the terms ''insured System bank'' and ''bank'' but the Act also specifies under section 5.61(e), 12 U.S.C. 2277a–10(e), that such terms also include production credit associations and other associations making direct loans under the authority provided under section 7.6 of the Act, 12 U.S.C. 2279b. Consequently, the terms ''troubled System institution,'' ''troubled System bank,'' or ''troubled System association'' are used to refer to those institutions specified in sections 5.61(a) and 5.61(e) of the Act, 12 U.S.C. 2277a–10(a) and 2277a–10(e).

[3] The least-cost test is the means of determining the least-cost resolution. Section 5.61(a)(3)(A) states, ''Assistance may not be provided…unless the means of providing the assistance is the least costly means of providing the assistance by the Farm Credit Insurance Fund of all possible alternatives available to the Corporation, including liquidation of the bank (including paying the insured obligations issued on behalf of the bank).'' *See* Act, section 5.61(a)(3), 12 U.S.C. 2277a–10(a)(3).

[4] 12 U.S.C. 2277a–8(b).

[5] 12 U.S.C. 2277a–10.

[6] *See* 77 FR 37399 (June 21, 2012). On July 26, 2012, the Corporation extended the comment period 90 days in response to several commenter requests. *See* 77 FR 45606 (August 1, 2012).

more System institutions as determined by the FCA.[7] Both commenters agree that it is reasonable to expect System institutions to engage in self-help mechanisms before requesting assistance from the Corporation, particularly within a district that is experiencing financial stress. They also note that the FCA has authority to resolve troubled System institutions either through involuntary mergers or direct transfer of funds of capital among System institutions.[8] They express concern that the Corporation will not consider a request for assistance until after the FCA has exercised its authority to resolve troubled System institutions.[9]

In response to these comments, the Corporation is removing the language on ''other resolution alternatives'' that the commenters found troubling. To clarify, FCA action is not a necessary precondition for the Corporation to consider a request for assistance to a troubled System institution. The essential precondition for the Corporation to consider providing assistance is the receipt of a request for assistance and an assistance proposal. As explained in the final policy statement, a request for assistance can be initiated either directly from a troubled System institution or from other System institutions seeking to acquire or assist a troubled System institution. If the Corporation determines it is appropriate based on the facts and circumstances surrounding the request, the Corporation will provide System institutions the opportunity to submit information related to the request.

B. Least-Cost Test

In the draft policy statement, the Corporation stated that it would conduct a least-cost test to determine whether the cost of providing assistance to a troubled System institution is less costly to the Insurance Fund than a liquidation of the institution. In brief, the Corporation would review the assistance proposal and gather any additional information necessary to estimate the cost of liquidation. Once this estimate has been computed, the Corporation would determine the cost and type of assistance. The Corporation would then compare the cost of providing assistance to the cost of liquidation to make its least-cost determination.

The draft policy statement also describes the complexity of conducting a least-cost test. For example, the Corporation describes a scenario where a sizable association is failing. The liquidation of the large association might not have an immediate impact on the funding bank's ability to continue meeting its insured obligations, but the effect of the liquidation could create significant disruption through a district that could threaten the bank's ability to continue as a going concern. Without assistance from the Corporation, the bank might eventually fail, creating greater losses to the Insurance Fund.

The Corporation received two comments on the least-cost test discussion. Both commenters generally agree with the principles behind the least-cost determination, specifically the discussion of considering the full impact on the Insurance Fund over time. However, the commenters also reference a separate document titled a ''Least-Cost Test Example'' that the Corporation shared publicly as an example of how the least-cost test might be performed if the troubled System institution was an association. In general, the commenters believed the assumptions used in this example were too optimistic.[10]

In response to these comments, it appears the commenters misunderstood the purpose of the Least-Cost Test Example. The Corporation created this example as part of its fact-gathering process in the development phase of the draft policy statement; the example itself is not a part of the draft policy statement.[11] It also appears the commenters misunderstand the ''cost of liquidation'' as it relates to the Insurance Fund. For example, the commenters identify certain ''indirect costs'' that may result from placing a troubled System institution into receivership. While these indirect costs may adversely affect other System institutions or the System as a whole, it is unclear that these costs would create losses to the Insurance Fund. For the Corporation to approve assistance, there must be a reasonable basis to conclude that the assistance would prevent a more costly loss to the Insurance Fund as a result of indirect losses.

In view of the comments received, the Corporation is substantially revising the least-cost test discussion of the final ''Policy Statement Concerning Assistance'' to provide greater clarity concerning the ''cost of liquidation'' as it relates to the Insurance Fund. Since the Insurance Fund's primary purpose is to insure the timely payment of principal and interest on System bank insured debt obligations, it is clear that a loss to the Insurance Fund occurs when a System bank defaults on an insured debt obligation, and the Corporation must use the Insurance Fund to pay the obligation. In making the least-cost determination, the Corporation must be able to reasonably estimate whether the troubled System institution's failure will impair a bank's ability to pay its insured debt obligations, creating losses to the Insurance Fund. The final policy statement provides guidance for how the Corporation might reasonably estimate costs to either resolve a troubled System institution or stem financial contagion within the System.

After considering all comments received, the Corporation has given final approval to the ''Policy Statement Concerning Assistance,'' with changes. The existing ''Policy Statement Concerning Stand-Alone Assistance'' is withdrawn. The text of the final ''Policy

[7] The Act provides authority for Farm Credit banks to merge with other Farm Credit banks and Farm Credit associations to merge with other Farm Credit associations. See Act, Title VII.

[8] Under section 4.12(a) of the Act, 12 U.S.C. 2183(a), FCA has authority to require that a System association merge with another association if it has failed to meet its outstanding obligations or failed to conduct its operations in accordance with the Act. Under section 5.17(a) of the Act, 12 U.S.C. 2252(a), FCA has authority to require two or more System banks to merge if the FCA determines that one of the banks has failed to meet its outstanding obligations. The commenters also referred to 12 CFR 611.1130 which states, ''Section 5.17(a)(6) of the Act authorizes the FCA to regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System, including banks, associations, and service organizations organized under the Act.''

[9] For example, the commenters state that the draft policy statement ''appears to establish a vague expectation for the exhaustion of resolution alternatives in a manner that essentially forces other System institutions to provide involuntary assistance through FCA regulatory action,'' which may result in ''a de-facto joint and several financial call'' from other System institutions.

[10] For example, the commenters believed that some of the recovery levels employed in the example were too high and that the example did not entirely reflect all the costs associated with a receivership.

[11] The commenters recognized this distinction but appeared to want the Corporation to consider more least-cost test examples. The Corporation agrees with the commenters that the example was not complicated and may not have exhaustively considered all possibilities and costs associated with liquidating a troubled System association. The Corporation could have created a more complex example but this was not necessary to advance the discussion and gather general information to update its policy statement. In reality, the value of assets and costs associated with a receivership could widely fluctuate based on numerous factors at the time of liquidation such as the condition of the agricultural sector and general economy, the condition of the System institution being liquidated, the condition and extent to which other System institutions could provide their own assistance to the troubled System association, the unique characteristics of the asset portfolio, the potential pool of bidders at the time of liquidation, and so forth.

Statement Concerning Assistance'' is set out below in its entirety:

Farm Credit System Insurance Corporation

Policy Statement Concerning Assistance

Background

The Farm Credit System Insurance Corporation (Corporation), in its sole discretion, is authorized under section 5.61(a) of the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2277a–10(a), to provide, on such terms and conditions as the Corporation's Board of Directors may prescribe: (1) Stand-alone assistance in the form of loans, asset or debt security purchases, assumption of liabilities, or contributions: (a) To prevent the placing of the institution [12] into receivership, (b) to restore the institution to normal operation, or (c) to reduce the risk to the Corporation posed by the institution when severe financial conditions threaten the stability of a significant number of other System institutions or System institutions possessing significant financial resources; or (2) Assistance to facilitate a merger or consolidation of a ''qualifying'' [13] troubled System institution with another System institution through loans, loan guarantees, asset or debt security purchases, assumption of liabilities, contributions, or any combination thereof.[14]

If the Corporation receives a request for assistance, it must compare the cost of liquidation to the cost of providing assistance to determine the least costly alternative to the Insurance Fund.[15] In making this discretionary determination, the Corporation is authorized to gather any information necessary to perform the least-cost test.[16] After gathering all pertinent information, the Corporation must: (1) Evaluate alternatives on a present-value basis, using a reasonable discount rate, (2) document the evaluation and the assumptions on which the evaluation is based, and (3) retain the documentation for not less than 5 years.[17]

Policy Statement

The Corporation will consider a request for assistance to a troubled System institution under section 5.61(a) of the Act, 12 U.S.C. 2277a–10(a), upon receipt of an assistance proposal. An assistance proposal can be submitted either directly from a troubled System institution, from other System institutions seeking to acquire or assist a troubled System institution, or from the System banks to stem a liquidity crisis. Upon receipt of an assistance proposal, if the Corporation determines it is appropriate based on the facts and circumstances surrounding the request, the Corporation will provide System institutions the opportunity to submit any information, including information on the cost to the Farm Credit Insurance Fund (Insurance Fund) of a liquidation.[18] The Corporation will then conduct a least-cost test to determine whether the cost of providing assistance is less costly to the Insurance Fund than the cost of liquidating a System institution. If the cost of providing assistance is less than the cost of liquidation to the Insurance Fund, and the Corporation, in its sole discretion, approves assistance, the Corporation will enter into an agreement with the System institution receiving assistance.

Assistance Proposals

A System institution requesting assistance must submit a proposal to the Corporation. If the proposal is for stand-alone assistance, the proposal must provide justification for the assistance, including a detailed analysis of how such assistance will return the troubled System institution to a financially viable, self-sustaining operation. If the proposed assistance is to facilitate a merger, the proposal must demonstrate that the continuing System institution can safely and soundly absorb the financial and operational impact that will result from the merger. Moreover, the Corporation would consider FCA's preliminary approval of the proposed merger, pending the least-cost determination to provide assistance. If a System institution or group of System institutions submits an assistance proposal to resolve a troubled System institution or stem a liquidity crisis or financial contagion within the System, the proposal must contain sufficient information to demonstrate how the Corporation's assistance would be less costly to the Insurance Fund than liquidating the troubled System institution(s).

Assistance proposals must contain information to help the Corporation compare the cost of providing assistance to the cost of liquidating the troubled System institution as part of its least-cost determination. Assistance proposals can include requests for loans, loan guarantees, loss-sharing arrangements, asset or debt security purchases, assumption of liabilities, or cash contributions. The Corporation will consider the nature of the financial assistance requested on a case-by-case basis and may alter the form or amount of assistance as part of its determination. The Corporation has identified the following minimum criteria to be included in a request for assistance and assistance proposals:

(1) Financial condition and performance criteria to better understand the problem that caused the need for assistance, including the rationale for seeking assistance;

(2) The type and amount of assistance needed, as well as a reasonable repayment plan. Assistance proposals must include fee arrangements with attorneys, accountants, consultants, and other parties incident to the request for assistance (or projected costs for these arrangements). The Corporation would not acquire or service assets without a strong justification;

(3) Reasonable projections to assess the future viability of the institution after assistance has been provided. This

[12] Section 5.61(a) of the Act uses the terms ''insured System bank'' and ''bank'' but the Act also specifies under section 5.61(e), 12 U.S.C. 2277a–10(e), that such terms also include production credit associations and other associations making direct loans under the authority provided under section 7.6 of the Act, 12 U.S.C. 2279b. Consequently, the terms ''troubled System institution,'' ''troubled System bank,'' or ''troubled System association'' are used to refer to those institutions specified in sections 5.61(a) and 5.61(e) of the Act, 12 U.S.C. 2277a–10(a) and 2277a–10(e).

[13] ''Qualifying'' means the troubled System institution is: (1) In receivership, (2) in danger of being placed in receivership, or (3) an institution that, when severe financial conditions exist that threaten the stability of a significant number of System institutions or of System institutions possessing significant financial resources, requires assistance to lessen the risk to the Corporation posed by such System institution under such threat of instability. *See* Act, section 5.61(a)(2)(B), 12 U.S.C. 2277a–10(a)(2)(B).

[14] The Corporation is not authorized to purchase voting stock from the troubled System institution. *See* Act, section 5.61(a)(3)(F), 12 U.S.C. 2277a–10(a)(3)(F).

[15] The cost of liquidation shall be made as of the earliest of: (I) The date on which a conservator is appointed for the institution, (II) the date on which a receiver is appointed for the institution, or (III) the date on which the Corporation makes any determination to provide assistance to the institution. *See* Act, section 5.61(a)(3)(C), 12 U.S.C. 2277a–10(a)(3)(C).

[16] *See* Act, sections 5.58(8) and 5.59, 12 U.S.C. 2277a–7(8) and 2277a–8. The Corporation will accord such other System institutions as the Corporation determines to be appropriate the opportunity to submit information relating to the determination. *See* Act, section 5.61(a)(3)(A), 12 U.S.C. 2277a–10(a)(3)(A).

[17] *See* Act, section 5.61(a)(3)(B), 12 U.S.C. 2277a–10(a)(3)(B). In addition, in regards to requests for stand-alone assistance, the Corporation must evaluate the adequacy of managerial resources of the troubled System institution. The Corporation is authorized to determine the continued service of any director or senior ranking officer who serves in a policymaking role for the assisted System institution as a condition of approving assistance. *See* Act, section 5.61(a)(3)(D), 12 U.S.C. 2277a–10(a)(3)(D).

[18] The Corporation will determine which System institutions will provide this information.

would include earnings projections and a capital restoration plan to achieve adequate capitalization. Earnings projections and the capital restoration plan must include the impact of repayment of assistance;

(4) A business plan that would implement written policies and procedures designed to guide operations safely and soundly and to correct the problems that caused the need for assistance. The plan must include an internal control system to monitor ongoing performance with measurable criteria. The plan must also include an operating budget, including compensation arrangements covering directors and senior officers. Plans to continue the service and compensation of directors and senior officers must be pre-approved by the Corporation before it provides assistance and until assistance is repaid; and

(5) Analysis of the effect of assistance on shareholders, uninsured creditors (e.g., impairment on subordinated debt), other System institutions and the financial markets. If the troubled System institution is an association, the analysis must include the impact on its funding bank's ability to continue meeting its insured obligations.

The Corporation reserves the right to request additional information as needed to conduct the least-cost test.

The Least-Cost Test

The Corporation will conduct a least-cost test to determine whether providing assistance to a troubled System institution is less costly to the Insurance Fund than liquidating the institution. The first step of the least-cost test is to determine the estimated liquidation value of the troubled System institution.[19] In making this determination, the Corporation shall use its examination authority under section 5.59(b) of the Act, 12 U.S.C. 2277a–8(b), to collect information from the troubled System institution to calculate the estimated liquidation value of the troubled System institution.[20] This information shall, at a minimum, include specific data elements as determined by Corporation staff to conduct a present-value analysis of the troubled System institution's assets, using a reasonable discount rate. As required by the Act, the troubled System institution must provide the Corporation all information necessary to perform a least-cost determination.

The second step of the least-cost test is for the Corporation to reasonably estimate whether the liquidation of the troubled System institution(s) creates a loss to the Insurance Fund. Since the Insurance Fund has been primarily established to insure the timely payment of principal and interest on System bank insured debt obligations,[21] a loss to the Insurance Fund occurs when a System bank defaults on an insured obligation, and the Corporation must use the Insurance Fund to pay the obligation.[22] Accordingly, to meet the least-cost test, the Corporation must be able to reasonably estimate whether the troubled System institution's failure will impair a bank's ability to pay its insured debt obligations.

A loss to the Insurance Fund may result from direct and/or indirect losses. Direct losses include the estimated losses to the Insurance Fund from the liquidation of a troubled System institution. Indirect losses to the Insurance Fund include the consequent effects of liquidating a troubled System institution. For example, if the troubled System institution is a bank, there is a direct loss to the Insurance Fund if the Corporation reasonably estimates that the net present value of the bank's assets[23] is less than its insured debt obligations.[24] If the Corporation can reasonably estimate that the liquidation of a troubled System bank subsequently causes one or more of the remaining System banks to default on insured debt obligations, there is an indirect loss to the Insurance Fund. Direct losses to the Insurance Fund can be reasonably estimated by the Corporation, but indirect losses to the Insurance Fund may be difficult for the Corporation to reasonably estimate. Consequently, it will be incumbent upon the remaining System banks to provide the Corporation with sufficient information and analysis to demonstrate that indirect losses to the Insurance Fund will result from the bank liquidation. For example, when a severe financial crisis exists, a System bank liquidation might cause the remaining System banks to be shut out of the debt market.[25] In a less extreme scenario, a System bank liquidation might substantially increase the cost of funds to the remaining System banks. In either scenario, for indirect costs to be considered, the Corporation must have sufficient information so that it can reasonably estimate the indirect loss associated with the bank liquidation. If indirect losses can be reasonably estimated, the Corporation may consider such losses in its least-cost test and assistance determination.

If the troubled System institution is an association, the Corporation must be able to reasonably estimate that the troubled System association's failure causes a loss to the Insurance Fund for there to be a basis for providing assistance. The funding bank would need to provide the Corporation with information to support the association request for assistance. If the Corporation reasonably estimates that the net present value of the association's assets[26] is less than the amount of its direct note with its funding bank, there would be a loss to the bank. If the Corporation reasonably estimates that the funding bank can sufficiently absorb this loss, there would be no loss to the Insurance Fund and, consequently, no basis for the Corporation to provide assistance to the troubled System association. However, if the Corporation reasonably estimates that the loss on the direct note is significant enough that the funding bank may default on its insured debt obligations, the Corporation may provide assistance to the troubled System association.

Moreover, if a sizable System association fails, or several smaller System associations fail, it is also possible that indirect losses to the Insurance Fund may result from association liquidations. For example, the liquidation of a considerable amount of agricultural loans in a relatively short period of time may cause a general decline in loan and collateral values throughout the district, creating higher

[19] This value is computed by subtracting the present-value of the institution's liabilities from its assets. Liabilities include estimated resolution expenses.

[20] The Corporation will request that FCA examiners collect the information.

[21] *See* section 5.60(c)(1) of the Act, 12 U.S.C. 2277a–9(c)(1), which states, in part, ''The Corporation shall expend amounts in the Insurance Fund to the extent necessary to insure the timely payment of interest and principal on insured obligations.''

[22] This assumes that no other System institution is willing to voluntarily assist the defaulting bank to avoid a payout from the Insurance Fund.

[23] The net present value of bank assets is the estimated present value of bank assets at liquidation less estimated payments to creditors with a higher priority of claims than insured debt obligations and estimated resolution expenses.

[24] Conversely, there is no direct loss to the Insurance Fund if the Corporation reasonably estimates that the net present value of the bank's assets at liquidation is greater than its insured debt obligations.

[25] In a liquidity crisis situation, the Corporation would work with the System banks to ensure the Insurance Fund was used to protect investors in insured debt obligations.

[26] The net present value of association assets is the estimated present value of association assets at liquidation less estimated payments to creditors with higher priority of claims than the funding bank and estimated resolution expenses. In most cases, receivership expenses will be paid out of the receivership estate, so there would be no administrative cost to the Insurance Fund from the liquidation of the association.

levels of risk in the remaining association direct notes. Moreover, because the bank loses a significant source of revenue and capital, it might not be able to increase the cost of funds to the remaining associations to make up for lost revenue while simultaneously increasing their investment requirement to remain adequately capitalized. Without providing assistance to the sizable troubled association to prevent financial contagion, other associations could fail or the bank itself could fail, potentially creating losses to the Insurance Fund. A similar scenario could result with the failure of several smaller associations during a period of severe stress in agriculture. A temporary cash infusion to the bank could counteract the effects of financial contagion, stabilize the district, and help avoid a bank failure. The Corporation would consider structuring assistance so that it would recoup the cost associated with providing assistance. Therefore, if indirect losses can be reasonably estimated, the Corporation may consider such losses in its least-cost test and assistance determination.

The third step of the least-cost test is to determine the type and amount of assistance. The cost of providing assistance will depend upon the structure of the assistance. For example, the Corporation's purchase of distressed assets from a troubled System institution may cost the Insurance Fund more than providing the institution a loan with a repayment plan.[27] Moreover, if other System institutions are willing to contribute some of their funds to the troubled System institution to reduce the cost of providing assistance, the Corporation will factor this amount into its least-cost test and assistance determination.

The final step in the least-cost test is to compare the cost of liquidation to the cost of providing assistance. If the cost of providing assistance from the Insurance Fund is less than the cost of liquidating a troubled System institution (to the Insurance Fund), the Corporation's Board of Directors, in its discretion, may approve assistance to the troubled System institution. As required by statute, the Corporation shall use the information it receives during its least-cost determination to evaluate the alternatives, document the evaluation and the assumptions on which the evaluation is based, and retain the documentation for not less than 5 years.

Assistance Agreements

If the Corporation provides assistance, it will enter into an agreement with the System institution receiving assistance. The terms and conditions of the agreement will be determined on a case-by-case basis and may include limits on (or prior approval of) the types or amounts of activities the institution can engage in while assistance is outstanding. For example, assistance agreements might include repayment terms and limits on concentration risk, patronage and dividend payments, executive compensation, and certain types of expenses. Assistance agreements may also provide the Corporation the right to have a representative attend the institution's board meetings. Each assistance agreement will be subject to the Corporation's Board of Directors' approval. While assistance agreements are outstanding, the Corporation will use its examination authority to ensure compliance with the agreement. Moreover, the Corporation will require the System institution receiving assistance to certify and publicly disclose compliance with the agreement requirements, including the disclosure of any instances of material noncompliance with the agreement.

Dated: April 12, 2013.

Mary Alice Donner,

Acting Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 2013–09165 Filed 4–17–13; 8:45 am]

BILLING CODE 6710–01–P

[27] In the event the Corporation exercises its discretion to provide assistance, in most cases assistance would be provided to the funding bank, regardless of whether the troubled System institution is a bank or an association. For example, the Corporation may provide the funding bank a collateralized loan, purchase subordinated debt from the funding bank, or enter into a loss-sharing agreement with the funding bank to either restore the funding bank or its affiliated association (or both) to normal operations. If the assistance can be structured with a repayment feature, it is likely to be the least costly means of providing assistance of all possible alternatives available to the Corporation.

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, April 23, 2013 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–09245 Filed 4–16–13; 4:15 pm]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010979–054.

Title: Caribbean Shipowners Association.

Parties: CMA CGM, S.A.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; Tropical Shipping and Construction Company Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW., Washington, DC 20006.

Synopsis: The amendment would add King Ocean Services Limited as a party to the agreement.

Agreement No.: 012204.

Title: ELJSA/Hanjin Shipping Slot Exchange Agreement.

Parties: Evergreen Line Joint Service Agreement and Hanjin Shipping.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802

Synopsis: The agreement authorizes the parties to exchange space on each other's services in the trade between China, Taiwan, and Vietnam, on the one hand, and the U.S. West Coast, on the other hand.

Agreement No.: 012205.

Title: ELJSA/COSCON Slot Exchange Agreement.

Parties: Evergreen Line Joint Service Agreement and Cosco Container Lines Company Limited.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to exchange space on each other's services in the trade between China, Hong Kong, and Taiwan on the one hand, and the U.S. West Coast, on the other hand.

Dated: April 12, 2013.

By Order of the Federal Maritime Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–09091 Filed 4–17–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 2078F.
Name: Ambassador Brokers, Inc.
Address: 40 Pearl Street, Braintree, MA 02184.
Date Revoked: March 27, 2013.
Reason: Failed to maintain a valid bond.

License No.: 003445F.
Name: Nedlloyd Logistics, Inc.
Address: Giralda Farms, Madison Avenue, Madison, NJ 07940.
Date Revoked: March 29, 2013.
Reason: Failed to maintain a valid bond.

License No.: 3677F.
Name: Super Cargo International Services, Inc.
Address: 5519 NW 72nd Avenue, Miami, FL 33166.
Date Revoked: March 22, 2013.
Reason: Failed to maintain a valid bond.

License No.: 16761NF.
Name: Transunion America, Inc.
Address: 20 West Lincoln Avenue, Suite 206, Valley Stream, NY 11580.
Date Revoked: March 24, 2013.
Reason: Failed to maintain valid bonds.

License No.: 018413N.
Name: Chicago Int'l Forwarder Incorporated.
Address: 301 Oliver Court, Westmont, IL 60559.
Date Revoked: March 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018798N.
Name: Beyond Shipping, Inc.
Address: 4030 Valley Blvd., Suite 106, Walnut, CA 91789.
Date Revoked: March 31, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018824N.
Name: Christopher Onyekwere dba Maritime Services.
Address: 3639 Campfield Court, Katy, TX 77449.
Date Revoked: March 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 018839N.
Name: Aliana Express, Inc.
Address: 11100 E. Artesia Blvd., Suite H, Cerritos, CA 90703.
Date Revoked: March 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020337F.
Name: WTG Logistics, Inc. dba WTG International.
Address: 140 Epping Road, Exeter, NH 03833.
Date Revoked: March 27, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020734NF.
Name: Sil, LLC. dba Air Ocean USA, LLC. dba Superior International Logistics
Address: 4471 NW 36th Street, Suite 240, Miami Springs, FL 33166.
Date Revoked: February 28, 2013.
Reason: Failed to maintain valid bonds.

License No.: 020953N.
Name: Gold Cargo Freight, Corp.
Address: 8233 NW 68th Street, Miami, FL 33166.
Date Revoked: March 21, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021083N.
Name: Jeepney Express Padala, Inc. dba Jeepney Express dba Kalesa Express dba Victory Cargo.
Address: 2647 West Woodland Drive, Anaheim, CA 92801.
Date Revoked: March 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021170NF.
Name: Ocean Star Logistics Inc.
Address: 428 S. Atlantic Blvd., Suite 203, Monterey Park, CA 91754.
Date Revoked: March 24, 2013.
Reason: Failed to maintain valid bonds.

License No.: 021305N.
Name: PJC Freightways, Inc.
Address: 7900 NW 68th Street, Miami, FL 33166.
Date Revoked: March 18, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021440N.
Name: Coreana Express (Sea-Tac) Inc.
Address: 6858 South 220th Street, Kent, WA 98032.
Date Revoked: March 24, 2013.
Reason: Failed to maintain a valid bond.

License No.: 021707N.
Name: Seamen Freight Logistics, Inc.
Address: 155–06 South Conduit Avenue, Suite 203–A, Jamaica, NY 11434.
Date Revoked: March 29, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023628F.
Name: Global Cargo Connection, Inc.
Address: 2775 W. Okeechobee Road, Lot 146, Hialeah, FL 33010.
Date Revoked: March 22, 2013.
Reason: Failed to maintain a valid bond.

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–09063 Filed 4–17–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Blade Express, Inc. dba B.E. Logistics, Inc. dba BE Logistics dba Belogistics dba Core Logistics (NVO), 12911 Simms Avenue, Hawthorn, CA 90250, Officers: Kathleen Martin, Secretary (QI), Daniel Dvorsky, President/ Treasurer, Application Type: New NVO License

Global Expeditors, Limited Liability Company (NVO & OFF), 4 Englehard Avenue, Avenel, NJ 07001, Officer: Robert J. O'Neill, Member (QI), Application Type: QI Change

M2K Consulting, Inc. dba Argo Shipping Company (NVO & OFF), 621 East Olive Avenue, Suite 104, Burbank, CA 91501, Officer: Abet Mehrabian, Secretary (QI), Application Type: New NVO & OFF License

Navterra Inc. (OFF), 2320 Marinship Way, Suite 120, Sausalito, CA 94965, Officers: Maureen D. Agius, Vice President (QI), Matti F. Klintberg, Secretary, Application Type: New OFF License

Total Global Solutions, Inc. (NVO & OFF), 4290 Bells Ferry Road, #244, Suite 106, Kennesaw, GA 30144, Officers: Dennis R. Smith, CEO (QI), Kevin L. Miller, Secretary, Application Type: QI Change

Triple Eagle Logistics Inc. dba Triple Eagle Logistic Canada Inc. (NVO & OFF), 17890 Castleton Street, Suite 367, City of Industry, CA 91748, Officers: Donald Hackney, Vice President (QI), Hongyi Deng, President, Application Type: New NVO & OFF License

WMO Logistics Inc. (NVO & OFF), 16622 Amberwood Way, Cerritos, CA 90703, Officer: Dino Balgemino, President (QI), Application Type: New NVO & OFF License

Dated: April 12, 2013.

By the Commission.

Rachel E. Dickon.

Assistant Secretary.

[FR Doc. 2013–09087 Filed 4–17–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

The Commission gives notice that it has rescinded its Order revoking the following licenses pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 017436N.

Name: Scorpion Express Line Corp.

Address: 4995 NW 72nd Avenue, Suite 209, Miami, FL 33122.

Order Published: April 3, 2013 (Volume 78, No. 64, Pg. 20107).

License No.: 022799N.

Name: Atlantic Cargo Logistics LLC.

Address: 127 East New York Avenue, Suite 1, Deland, FL 32720.

Order Published: April 3, 2013 (Volume 78, No. 64, Pg. 20107).

James A. Nussbaumer,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–09086 Filed 4–17–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: You may submit comments, identified by *FR 4102, or FR TA–1,* by any of the following methods:

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

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

Additionally, commenters may send a copy of their comments to the OMB Desk Officer — Shagufta Ahmed — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer — Cynthia Ayouch — Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection 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.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Reporting and Disclosure Requirements Associated with the Policy on Payments System Risk.

Agency form number: FR 4102.

OMB control number: 7100–0315.

Frequency: Biennial.

Reporters: Payment and securities settlement systems.

Annual reporting hours: 210 hours.

Estimated average hours per response: 70 hours.

Number of respondents: 3.

General description of report: The Federal Reserve has determined that sections 11(i) & (j), 13, 16, and 19(f) of the Federal Reserve Act authorize the Board to exercise general supervision of the Reserve Banks, to make rules and regulations to perform effectively its duties and functions, and to determine and regulate fees charged by member or nonmember banks for the collection or payment of checks, among other things (12 U.S.C. 248(i) & (j), 248–1, 342, 360, and 464). Additionally, depending upon the individual institution, the information collection may be authorized under a more specific statute. Specifically, the Board is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from savings and loan holding companies under 12 U.S.C. 1467a(b)(3) and 5412; from Edge and agreement corporations under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)), and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)). Together, these statutory provisions provide the legal authorization for the reporting and disclosure requirements associated with the FR 4102. Because the self-assessments are to be publicly disclosed and because the Federal Reserve will not collect any information pursuant to this information collection beyond what is made publicly available, no confidentiality issue arises with regard to the FR 4102. The reporting and disclosure requirements of the FR 4102 are mandatory.

Abstract: The FR 4102 was implemented in January 2007 as a result of revisions to the Federal Reserve's Policy on Payments System Risk (PSR policy). Under the revised policy, systemically important payment and settlement systems as determined by the Board at that time and subject to the Federal Reserve's authority are expected to complete and disclose publicly self-assessments against the principles and minimum standards in the policy. The self-assessment should be reviewed and approved by the system's senior management and board of directors upon completion and made readily available to the public. In addition, a self-assessment should be updated following material changes to the system or its environment and, at a minimum, reviewed by the system every two years.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Transfer Agent Registration and Amendment Form.

Agency form number: FR TA–1.

OMB control number: 7100–0099.

Frequency: On occasion.

Reporters: State member banks (SMBs) and their subsidiaries, bank holding companies (BHCs), certain nondeposit trust company subsidiaries of BHCs, and savings and loan holding companies (SLHCs).

Annual reporting hours: 4 hours.

Estimated average time per response: Registrations: 1.25 hours; Amendments: 10 minutes.

Number of respondents: Registrations: 2; Amendments: 4.

General description of report: The FR TA–1 is mandatory and that its collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Securities Exchange Act of 1934 (the Act), as amended (15 U.S.C. 78q-1(c), 78q(a)(3), and 78w(a)(1)). Additionally, Section 3(a)(34)(B)(ii) of the Act (15 U.S.C. 78c(a)(34)(B)(ii)) provides that the Board is the appropriate regulatory agency for purposes of various filings by SMBs and their subsidiaries, BHCs, SLHCs and certain nondepository trust company subsidiaries of BHCs that act as a clearing agency or transfer agent. The registrations are public filings and are not considered confidential.

Abstract: The Act requires any person acting as a transfer agent to register as such and to amend registration information when it changes. SMBs and their subsidiaries, BHCs, and certain nondeposit trust company subsidiaries of BHCs register with the Federal Reserve System by submitting Form TA–1. The information collected is available to the public upon request and includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent.

Current actions: The Federal Reserve proposes to include SLHCs in the respondent panel.

Board of Governors of the Federal Reserve System, April 15, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–09115 Filed 4–17–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier HHS–EGOV–18380–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Electronic Government Office, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Electronic Government Office (EGOV), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for reinstatement of a previously-approved information collection assigned OMB control number 4040–0001, which expired on March 31, 2013. The ICR also requests categorizing the form as a common form, meaning HHS will only request approval for its own use of the form rather than aggregating the burden estimate across all Federal Agencies as was done for previous actions on this OMB control number. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before May 20, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 4040–0001 and document identifier HHS–EGOV–18380–30D for reference.

Information Collection Request Title: SF–424 Research & Related (R&R).

OMB No.: 4040–0001.

Abstract: The SF–424 Research & Related Information Collection is an information collection comprised of a set of standardized forms used for grant applications to research-based agencies.

Need and Proposed Use of the Information: The SF–424 R&R is used by the public to apply for Federal financial assistance in the forms of grants. These forms are submitted to the Federal grant-making research-based agencies for evaluation and review.

Likely Respondents: Organizations and institutions seeking research-based grants.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

HHS estimates that the SF–424 Research and Related form will take 1 hour to complete.

We expect that 128,378 respondents will use this form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
SF–424 Research and Related Application for Federal Assistance	128,378	1	1	128,378
Total	128,378	....	....	128,378

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–09046 Filed 4–17–13; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Misconduct in Science/ Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that effective on March 14, 2013, a Settlement Agreement was made and entered into by and between Dr. Philippe Bois and the United States Department of Health and Human Services (HHS), Kathleen Sebelius, Howard K. Koh, Nancy Gunderson, and Donald Wright (collectively HHS) by and through the United States Attorney for the District of Columbia in *Bois* v. *HHS, et al.,* Civil Action no. 11-cv-1563, which was pending before the U.S. District Court for the District of Columbia.

In the Settlement Agreement, HHS and Dr. Bois agreed to settle the proceedings before the District Court of the District of Columbia as well as to resolve all administrative matters pending at HHS.

ORI found that Philippe Bois, Ph.D., former postdoctoral fellow, Department of Biochemistry, St. Jude Children's Research Hospital, engaged in research misconduct in research funded by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM071596, and National Cancer Institute (NCI), NIH, grants P30 CA021765, P01 CA071907, R01 CA072996, and R01 CA100603.

In the Settlement Agreement, the parties agreed that ORI found by a preponderance of the evidence that the Respondent committed misconduct in science and research misconduct by:

1. Knowingly and intentionally falsely reporting that FOXO1a was not expressed in cell lysates from alveolar rhabdomyosarcoma (ARMS) tumor biopsies, by selecting a specific FOX01a immunoblot to show the desired result, in Figure 1A of the following paper: Bois, P.R., Izeradjene, K., Houghton, P.J., Cleveland, J.L., Houghton, J.A., & Grosveld, C.G. ''FOXO1a acts as a selective tumor suppressor in alveolar rhabdomyosarcoma.'' *J. Cell. Biol.* 170:903–912, September 2005 (''*JCB* 2005'')

2. Falsifying data showing SDS–PAGE for papain digestion of VBS3 and αVBS, by falsely labeling lane 1 to represent papain only digestion, by falsely labeling lane 5 to represent papain digestion of the αVBS peptide, and by falsely inserting a band in lane 3 to represent the αVBS peptide, in Figure 4B of the following paper: Bois, P.R., Borgon, R.A., Vornhein, C., & Izard, T. ''Structural dynamics of α-actinin-vinculin interactions.'' *Mol. Cell. Biol.* 25:6112–6122, July 2005 (''*MCB* 2005'').

The parties further agreed that Dr. Bois denied committing research misconduct and, pursuant to 42 CFR part 93, filed a timely request for a hearing at which to contest ORI's findings. An HHS Administrative Law Judge (ALJ) denied Dr. Bois' request for a hearing. HHS subsequently entered a debarment order against Dr. Bois. Dr. Bois filed the above referenced lawsuit in the United States District Court for the District of Columbia asking the Court to vacate the debarment order and remand the matter for further proceedings before HHS, including but not limited to granting Dr. Bois' request for a hearing.

On March 2, 2012, Judge Berman Jackson of the United States District Court for the District of Columbia issued an order vacating HHS' debarment order, affirming Finding #1, and remanding the matter to HHS for further proceedings regarding Finding #2. On March 30, 2012, HHS filed a Motion for Reconsideration before Judge Berman Jackson.

On March 14, 2013, Dr. Bois and HHS entered into a Settlement Agreement (Agreement) to settle and dismiss the pending civil action. The terms of the

Settlement Agreement include that Dr. Bois denied that he committed research misconduct but he agreed not to further appeal ORI's findings of research misconduct set-forth above. Dr. Bois and HHS further agreed to the following administrative actions beginning on March 14, 2013:

(1) To have his research supervised for a period of three (3) years beginning on the effective date of the Agreement; he agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which his participation is proposed and prior to his participation in any capacity on PHS-supported research, he shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of his research contribution; he agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI, with such review and approval to be conducted promptly by ORI and not unreasonably withheld; he agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that for three (3) years beginning with the effective date of the Agreement, any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Dr. Bois is involved, a certification to ORI that the data provided by him are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS, including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three years (3) beginning with the effective date of the Agreement.

Dr. Bois further agreed to dismiss his lawsuit with prejudice and to withdraw further proceedings before HHS. Dr. Bois and HHS both agreed to waive or abandon all other claims. This notice supercedes the notice regarding this matter that was previously published in: **Federal Register** 76:111, June 9, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–09134 Filed 4–17–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Pilot Test of the Proposed Value and Efficiency Surveys and Communicating with Patients Checklist.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on January 7th, 2013 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 20, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pilot Test of the Proposed Value and Efficiency Surveys and Communicating With Patients Checklist

Maximizing value within the American health care system is an important priority. Value is often viewed as a combination of high quality, high efficiency care, and there is general agreement by consumers, policy makers, payers, and providers that it is lacking in the U.S. A recent report by the Institute of Medicine estimated that 20 to 30 percent ($765 billion a year) of U.S. healthcare spending was inefficient and could be reduced without lowering quality.

Multiple overlapping initiatives are currently seeking to improve value using a variety of approaches. Public reporting efforts led by the Centers for Medicare and Medicaid Services (CMS), other payers and consumer groups seek to enable consumers to make more informed choices about the quality, and in some cases, the costs of their care. A variety of demonstration projects and payment reforms initiated by CMS and private insurers are attempting to more closely link care quality with payments to create incentives for higher value care. And national improvement initiatives led by AHRQ (comprehensive unit-based safety programs [CUSP] for central line-associated blood stream infection [CLABSI], catheter-associated urinary tract infections [CUTI], and surgical units [SUSP]) and CMS (hospital engagement networks, QIO scopes of work) are seeking to raise care quality and reduce readmissions. Results from the CUSP–CLABSI project have demonstrated that central line infections can be reduced and unnecessary costs can be avoided across the health care system by concerted, unit-based improvement efforts.

As a systems level example, Denver Health, with initial funding from AHRQ, has taken major steps towards redesigning clinical and administrative processes so as to reduce staff time, patient waiting, and unnecessary costs. These improvements occurred without harm to quality and in some instances actually improved quality.

In many cases, improving quality improves efficiency naturally. Reducing the number of hospital errors, for example, will reduce costs associated with longer length of stay or error-triggered readmissions. It is more cost-effective to do things right the first time. But higher value may be more likely if organizations doing quality improvement link efforts to improve care quality with efforts to reduce unnecessary costs. AHRQ understands that many of the root causes of inefficiencies that drive up costs are closely linked to root causes of inefficiencies that lead to poor quality, uncoordinated care where redundancies and system failures place patients at risk. Enhancing value in healthcare requires understanding the contribution that organizational culture makes to value and working to foster a culture where high value is a cultural norm.[1] AHRQ's development of the Hospital Survey on Patient Safety Culture (HSOPS) has contributed greatly to efforts to promote the important role culture plays in providing safe care. HSOPS is used extensively in national improvement campaigns and many hospitals and health systems now regularly assess their safety cultures and use culture scores on organizational dashboards and as parts of variable compensation programs.

If organizations lack cultures committed to value then discrete efforts to raise dimensions of value are likely to yield limited and unsustainable results. And if organizational leaders have no plausible way to know whether their organizational culture is committed to value, then their ability to make value a higher organizational priority will be very limited. Thus, developing value and efficiency survey instruments for hospitals and medical offices fills an important need for many ongoing and planned efforts to foster greater value within American health care.

Given the widespread impact of cost and waste in health care, AHRQ will develop the Value and Efficiency (VE) Surveys for hospitals and medical offices. These surveys will measure staff perceptions about what is important in their organization and what attitudes and behaviors related to value and efficiency are supported, rewarded, and expected. The surveys will help hospitals and medical offices to identify and discuss strengths and weaknesses within their individual organizations. They can then use that knowledge to develop appropriate action plans to improve their value and efficiency. To develop these tools AHRQ will recruit medical staff from 42 hospitals and 96 medical offices to participate in cognitive testing and pretesting.

In addition to the VE surveys, AHRQ also intends to develop and test the feasibility and utility of a Patient Communication Checklist. Patients are demanding greater clarity into the costs of health care and what they can do about affordability problems. While there is recent interest in making health care prices more transparent for consumers (e.g., the Health Care Price Transparency Promotion Act of 2013 (H.R. 1326)), physician communication with patients about the cost of care will be a key component to attaining high-value, high-quality care from a patient perspective. To aid physicians, this proposal will develop a consumer value (CV) checklist. Physician checklists have been instrumental in many quality improvements, such as with AHRQ's reduction in central line-associated blood stream infections [CLABSI] (See Atul Gawande's Checklist Manifesto, Metropolitan Books, 2009). Checklists have also reduced surgical complications by preventing miscommunication during complex procedures. Similarly, checklists could potentially facilitate communication between clinicians and patients in complex discussions about patient preferences, quality, value, and out-of-pocket costs. The objective of the CV checklist is to facilitate shared decision-making, and also engage physician and patients in joint problem solving. For example, if discussions emanating from use of a checklist show that the patient is not likely to fill a critical prescription for financial reasons, this could trigger a discussion of generic substitutes or state or other subsidies available. Since the proper goal for any health care delivery system is to improve the quality and value of care delivered to patients, such a tool will bring the patient perspective on value into the decision-making about their care.

The CV checklist will address three major topics: who should talk with patients about preferences and value issues (e.g., nurses, physicians, etc.), when should these conversations occur (e.g., when patients may incur costs, when they express financial concerns, etc.), and how can clinicians prepare for and effectively facilitate such discussions.

This research has the following goals:

(1) Develop, cognitively test and modify as necessary the VE surveys (one for hospitals and one for medical offices);

(2) Pretest the VE surveys in hospitals and medical offices and modify as necessary based on the results;

(3) Develop, cognitively test and modify as necessary the checklist;

(4) Seek consumer/patient input on the potential value of the checklist;

(5) Pretest the checklist in hospitals and medical offices and either drop or modify as necessary based on patient and clinician views of the results;

(6) Make the final VE surveys and checklist available for use by the public.

This study is being conducted by AHRQ through its contractor, Health Research & Educational Trust (HRET), and subcontractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve these goals the following activities and data collections will be implemented:

(1) Cognitive interviews for the YE surveys. One round of interviews on the VE surveys will be conducted by telephone with 9 respondents from hospitals and 9 respondents from medical offices. The purpose of these interviews is to understand the cognitive processes the respondent engages in when answering a question on the VE survey and to refine the survey's items and composites. These interviews will be conducted with a mix of senior leaders and clinical staff (i.e., unit/department managers, practitioners, nurses, technicians, and medical assistants) from hospitals and medical offices throughout the U.S. with varying characteristics (e.g., size, geographic location, type of medical office practice/hospital, and possibly extent of experience with waste-reduction efforts).

(2) Pretest for the VE surveys. The surveys will be pretested with senior leaders and clinical staff from 42 hospitals and 96 medical offices. The purpose of the pretest is to collect data for an assessment of the reliability and construct validity of the surveys' items and composites, allowing for their further refinement. A site-level point-of-contact (POC) will be recruited in each medical office and hospital to manage the data collection at that organization (compiles sample information, distribute surveys, promote survey response, etc.). Exhibit 1 includes a burden estimate for the POC's time to manage the data collection.

(3) Medical office information form. This form will be completed by the medical office manager in each of the 96 medical office pretest sites to provide background characteristics, such as type of specialty(s) and majority ownership. A hospital information form will not be needed because characteristics on pretest hospitals will be obtained from the American Hospital Association's (AHA) data set based on a hospital's AHA ID number.

(4) Survey to identify items for CV checklist. In order to identify items to

[1] (refers to 2nd paragraph in page 3) According to Pronovost and Sexton (Assessing Safety Culture: Guidelines and Recommendations, Qual Saf Health Care 2005; 14:231–23), ''Definitions of culture commonly refer to values, attitudes, norms, beliefs, practices, policies, and behaviors of personnel. In essence, culture is 'the way we do things around here'.''

put on the checklist, a survey will be developed and sent to 160 representative participants (40 Physicians, 40 Registered Nurses, 20 Social Workers, 20 Health Educators, and 40 Patients). Once the survey responses have been collected, responses will be analyzed to help inform the development of the CV checklist. Checklist items will be chosen based on what is learned. For example, if clinicians strongly believe that it is inappropriate to discuss costs and value with patients, the checklist may require different items than if clinicians recognize the importance of such conversations but believe they lack required information to facilitate them.

(5) Cognitive Interviews for the CV checklist. Once checklist items have been identified, cognitive interviews will be conducted with 9 respondents in hospitals and 9 respondents in medical offices to understand the cognitive processes the respondent engages in when using the CV checklist. Cognitive interviewing will allow checklist developers to identify and classify difficulties respondents may have regarding checklist items. To get different perspectives, interviews will be conducted with a mix of physicians, nurses, social workers, health educators, and patients in hospitals and medical offices.

(6) Pretest the CV checklist. The checklist will then be pretested to solicit feedback from 50 physicians in hospitals and 50 physicians in medical offices. The pilot testing process will help identify areas where users of the checklist have trouble understanding, learning, and using the checklist. It also provides the opportunity to identify issues that can prevent successful deployment of the checklist.

(7) Dissemination activities. The final VE Surveys and CV checklist will be made available to the public through the AHRQ Web site. This activity does not impose a burden on the public and is therefore not included in the burden estimates in Exhibit 1.

The information collected will be used to test and improve the draft survey items in the VE Surveys and CV checklist.

The final VE instruments will be made available to the public for use in hospitals and medical offices to assess value and efficiency from the perspectives of their staff. The survey can be used by hospitals and medical offices to identify areas for improvement. Researchers are also likely to use the surveys to assess the impact of hospitals' and medical offices' value and efficiency improvement initiatives.

The final CV checklist will be made available to hospital and medical office clinicians to aid in having conversations with patients about value.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Cognitive interviews for the Hospital VE survey will be conducted with 9 hospital staff (approximately 3 managers, 3 nurses, and 3 technicians) and will take about one hour and 30 minutes to complete. Cognitive interviews for the Medical Office VE survey will be conducted with 9 medical office staff (approximately 4 physicians and 5 medical assistants) and will take about one hour and 30 minutes to complete. The Hospital VE survey will be administered to about 4,032 individuals from 42 hospitals (about 96 surveys per hospital) and requires 15 minutes to complete. A site-level POC will spend approximately 16 hours administering the Hospital VE survey. The Medical Office VE survey will be administered to about 504 individuals from 96 medical offices (about 5 surveys per medical office) and requires 15 minutes to complete. A site-level POC will spend approximately 6 hours administering the Medical Office VE survey. The medical office information form survey will be completed by a medical office manager at each of the 96 medical offices participating in the pretest and takes 10 minutes to complete.

One-hundred and sixty individuals (40 physicians, 40 nurses, 20 social workers, 20 health educators, and 40 patients) will participate in the survey to identify items for the CV checklist and will take 15 minutes to complete. Cognitive interviews for the CV checklist will be conducted with 18 individuals (9 in hospitals and 9 in medical offices, consisting of approximately 4 physicians, 4 nurses, 2 social workers, 2 health educators, and 6 patients) and will take about one hour to complete. One hundred physicians will participate in the pretest of the CV checklist (50 in hospitals and 50 in medical offices). The total burden is estimated to be 2,534 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $115,559 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of resonses per resondent	Hours per response	Total burden hours
Cognitive interviews for the Hospital VE survey	9	1	1.5	14
Cognitive interviews for the Medical Office VE survey	9	1	1.5	14
Pretest for the Hospital VE survey	4,032	1	15/60	1,008
Pretest for the Medical Office VE survey	504	1	15/60	126
POC Administration of the Hospital VE survey	42	1	16	672
POC Administration of the Medical Office VE survey	96	1	6	576
Medical office information form	96	1	10/60	16
Survey to identify items for CV checklist	160	1	15/60	40
Cognitive interviews for the CV checklist	18	1	1	18
Pretest for the CV checklist	100	1	30/60	50
Total	5,066	na	na	2,534

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Cognitive interviews for the Hospital VE survey	9	14	[a]$36.16	$506
Cognitive interviews for the Medical Office VE survey	9	14	[b]46.87	656
Pretest for the Hospital VE survey	4,032	1,008	[c]36.02	36,308
Pretest for the Medical Office VE survey	504	126	[d]27.73	3,494
Administration of the Hospital VE survey	42	672	[e]55.80	37,498
Administration of the Medical Office VE survey	96	576	[f]50.98	29,364
Medical office information form	96	16	[f]50.98	816
Survey to identify items for CV checklist	160	40	[g]45.02	1,801
Cognitive interviews for the CV checklist	18	18	[h]39.84	717
Pretest for the CV checklist	100	50	[i]87.98	399
Total	5,066	2,534	na	115,559

* National Occupational Employment and Wage Estimates in the United States, May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics'' (available at *http://www.bls.gov/oes/current/naics4_621100.htm* [for medical office setting] and *http://www.bls.gov/oes/current/naics4_622100.htm* [for hospital setting]).
[a] Based on the weighted average wages for 3 Registered Nurses (29–1111, $33.56), 3 Medical and Clinical Laboratory Technicians (29–2012, $19.11), and 3 General and Operational Managers (11–1021, $55.80) in the hospital setting;
[b] Based on the weighted average wages for 4 Family and General Practitioners (29–1062; $87.18) and 5 Medical Assistants (31–9092, $14.63) in the medical office setting;
[c] Based on the weighted average wages for 1,937 Registered Nurses, 1,131 Medical and Clinical Laboratory Technicians, 526 General and Operational Managers and 446 Physicians (29–1069; $66.23) in the hospital setting;
[d] Based on the weighted average wages for 91 Family and General Practitioners and 413 Medical Assistants in the medical office setting;
[e] Based on the average wages for General and Operational Managers in the hospital setting;
[f] Based on the average wages for General and Operational Managers in the medical office setting;
[g] Based on the weighted average wages for 40 Physician and Surgeons (29–10692; $88.78), 40 Registered Nurses (29–1111; $33.23), 20 Social Workers (21–1022; $24.28), 20 Health Educators (21–1091, $25.07), and 20 Patients (00–0000; $21.74);
[h] Based on the weighted average wages for 4 Physician and Surgeons, 4 Registered Nurses, 2 Social Workers, 2 Health Educators, and 6 Patients;
[i] Based on the weighted average wages for 50 Physician and Surgeons in the hospital setting and 50 Family and General Practitioners in the medical office setting;

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for this data collection. Although data collection will last for less than one year, the entire project will take about 2 years. The total cost for the three surveys is approximately is $1,001,202.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$273,838	$136,919
Data Collection Activities	153,119	76,560
Data Processing and Analysis	171,764	85,882
Publication of Results	14,753	7,377
Project Management	10,032	5,016
Overhead	377,696	188,848
Total	1,001,202	500,601

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 8, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–08946 Filed 4–17–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures and Domains To Use in Development of a Standardized Instrument for Use in Public Reporting of the Quality of Transition From Child-focused to Adult-focused Care in Young Adults With Chronic Conditions

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request for measures and domains.

SUMMARY: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b–9a). Section 1139A(b) charged the Department of Health and Human Services with improving pediatric health care quality measures. The Agency for Healthcare Research and Quality (AHRQ) is requesting the submission of instruments or domains (for example, key concepts) measuring aspects of the transition from child-focused to adult-focused care in young adults with chronic health conditions from all researchers, vendors, hospitals, stakeholders, and other interested parties. AHRQ is interested in instruments and items through which young adults or parent proxies may assess experiences they have with the health care system, including the transition from pediatric to adult health care. The goal is to develop a standardized instrument for use in assessing the quality of transition from child-focused to adult-focused care in young adults with chronic health conditions.

DATES: Please submit materials May 20, 2013. AHRQ will not respond to individual submissions, but will consider all suggestions.

ADDRESSES: Electronic submissions are encouraged, preferably as an email with an electronic file in a standard word processing format as an email attachment. Submissions may also be in the form of a letter to: Maushami DeSoto, M.Sc., Ph.D., MHA. Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, 540 Gaither Rd., Rockville, MD 20850, Phone: (301) 427–1546, Fax: (301) 427–1238, Email: *Maushami.Desoto@AHRQ.hhs.gov.*

All submissions must include a written statement from the submitter that it will grant AHRQ the necessary rights to use, modify, and adapt the submitted instruments, domains, items, and their documentation for the development of this survey and its dissemination for AHRQ purposes. The statement must also address the instrument's proprietary and/or confidentiality status. In accordance with CHIPRA's charge to improve pediatric quality care measures, and consistent with AHRQ's mandate to disseminate research results, 42 U.S.C. 299c–3, AHRQ purposes include public disclosure and dissemination (e.g., on the AHRQ Web site) of AHRQ products and the results of AHRQ-sponsored research and activities. The written statement must be signed by the copyright holder or an individual authorized to act for any holder of copyright and/or data rights on each submitted measure or instrument. The authority of the signatory to provide such authorization should be described in the letter. If the submitted measure or instrument is selected for further development AHRQ will request that the submitter execute a license granting all of the above-referenced rights to the Department of Health and Human Services.

Submission Guidelines

When submitting instruments, please include, to the extent that it is available:

—Name of the instrument;
—Copies of the full instrument, in all languages available;
—Domains or key concepts included in the instrument;
—Instrument reliability (internal consistency, test-retest, etc) and validity (content, construct, criterion-related);
—Results of cognitive testing;
—Results of field-testing;
—Current use of the instrument (who is using it, what it is being used for, how instrument findings are reported, and by whom the findings are used); and,
—Relevant peer-reviewed journal articles or full citations.

When submitting domains, please include, to the extent available:

—Detailed descriptions of question domain and specific purpose;
—Sample questions, in all languages available; and,
—Relevant peer-reviewed journal articles or full citations.

For all submissions, please also include:

A brief cover letter summarizing the information requested above for submitted instruments and domains, respectively;

Complete information about the person submitting the material, including:

(a) Name;
(b) Title;
(c) Organization;
(d) Mailing address;
(e) Telephone number;
(f) Email address; and,
(g) A written statement of intent that the submitter will grant to AHRQ the necessary rights to use, modify, and adapt the submitted instruments, items, and their supporting documentation for the development of the survey and its dissemination for AHRQ purposes, as described above.

FOR FURTHER INFORMATION CONTACT: Maushami DeSoto, M.Sc., Ph.D., MHA.

SUPPLEMENTARY INFORMATION: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act (the Act) to enact section 1139A (42 U.S.C. 1320b-9a). Since the law was passed, the Agency for Healthcare Research and Quality (AHRQ) and the Centers for Medicare & Medicaid Services (CMS) have been working together to implement selected provisions of the legislation related to children's health care quality. Section 1139A(b) of the Act charged the Department of Health and Human Services with improving pediatric health care quality measures. To implement the law, AHRQ and CMS have established the CHIPRA Pediatric Quality Measures Program (PQMP), which is designed to enhance select pediatric quality measures and develop new measures as needed.

The information sought in this Notice is being collected pursuant to the needs of the Children's Hospital Boston Center of Excellence for Pediatric Quality Measurement (CEPQM). It is one of the seven CHIPRA Pediatric Quality Measures Program (PQMP) Centers of Excellence and has been assigned the task of developing measures to assess aspects of the transition from child-focused to adult-focused care in young adults with chronic health conditions. To thoroughly carry out this task, the Center needs to identify and assess instruments or domains which already exist on this subject. Such measures will be considered in the development of a standardized instrument for voluntary public reporting by State Medicaid and CHIP programs and used by providers, consumers, other public and private purchasers, and others.

Existing instruments or domains submitted should capture adolescents' experiences with their health care, including the transition from pediatric to adult health care (for example, preparation readiness or evaluation of transfer). The survey development team is looking for items for which young adults or their parent proxies are generally the best or only judge; for example, the young adult or parent proxy can best say if the provider spent sufficient time with them or explained things in ways they could understand. Existing instruments that have been tested should have a high degree of reliability and validity; and evidence of wide use will be helpful.

Dated: April 8, 2013.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2013–08937 Filed 4–17–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: All nominations submitted in writing or electronically will be considered for appointment to the USPSTF. Nominations must be received by May 15th of a given year to be considered for appointment to begin in January of the following year.

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Primary Care, Prevention, and Clinical Partnerships, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public (in accord with the Freedom of Information Act, 5 U.S.C. 552(b)(6); 45 CFR 5.67).

ADDRESSES: Submit your responses either in writing or electronically to: Robert Cosby, ATTN: USPSTF Nominations, Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, *USPSTFmembernominations@ahrq.hhs.gov*.

Nomination Submissions

Nominations may be submitted in writing or electronically, but must include:

(1) The applicant's current curriculum vitae and contact information, including mailing address, email address, and telephone number, and

(2) a letter explaining how this individual meets the qualification requirements and how he/she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask persons under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, and research grants or contracts.

Nominee Selection

Appointments to the USPSTF will be made on the basis of qualifications as outlined below (see Qualification Requirements) and the current expertise needs of the USPSTF.

FOR FURTHER INFORMATION CONTACT: Robert Cosby at *USPSTFmembernominations@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions, and improvements in the organization, financing, and delivery of health care services. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing administrative, research and technical support for the USPSTF's operation. USPSTF members serve for four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, cost-effectiveness and appropriateness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). AHRQ is charged with supporting the dissemination of USPSTF recommendations. In addition to hard copy materials (that may be obtained from the AHRQ Publications Clearinghouse), current USPSTF recommendations and associated evidence reviews are available on the Internet (*www.uspreventiveservicestaskforce.org*).

USPSTF members meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and making recommendations on preventive-services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Nominated individuals will be selected for the USPSTF on the basis of their qualifications (in particular, those that address the required qualifications, outlined below) and the current expertise needs of the USPSTF. It is anticipated that three to four individuals will be invited to serve on the USPSTF beginning in January 2014. All individuals will be considered; however, strongest consideration will be given in 2014 to individuals with demonstrated training and expertise in the areas of behavioral medicine, internal medicine, nursing, obstetrics/ gynecology and pediatrics. AHRQ will retain and may consider nominations received this year and not selected during this cycle for future vacancies.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can self nominate. Organizations and individuals may nominate one or more persons qualified for membership on the USPSTF at any time. Individuals nominated prior to May 15, 2012, who continue to have interest in serving on the USPSTF, should be re-nominated.

Qualification Requirements: To qualify for the USPSTF and support its mission, an applicant or nominee must, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer reviewed literature and in the methods of evidence review;
2. Clinical prevention, health promotion and primary health care; and
3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health system level.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public health
- Health equity and the reduction of health disparities
- Application of science to health policy
- Communication of scientific findings to multiple audiences including health care professionals, policy makers and the general public.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

Dated: April 8, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–08935 Filed 4–17–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Descriptive Study of County versus State Administered Temporary Assistance for Needy Families (TANF) Programs.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) is proposing an information collection activity as part of the Descriptive Study of County and State Administered TANF Programs. The proposed information collection consists of semi-structured interviews with key County and State staff on questions of county TANF administration, policies, service delivery, and program context. Through this information collection, ACE seeks to gain an in-depth, systematic understanding of the differences in program implementation, operations, outputs and outcomes between state and county administered TANF programs, and identify special technical assistance needs of state supervised, county administered programs.

Respondents: Semi-structured interviews will be held with state and county TANF administrators and staff.

ANNUAL BURDEN ESTIMATES

Instrument	Annual Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
State TANF administrators discussion guide	6	1	1	6
State human service department director discussion guide	6	1	1	6
County TANF administrators discussion guide	12	1	1.5	18
County executives discussion guide	12	1	1	12
County TANF directors' associations discussion guide	6	1	1.5	9
Telephone interview protocol for state TANF directors	30	1	0.5	15

Estimated Total Annual Burden Hours: 66.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration, for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2013–09097 Filed 4–17–13; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: School Readiness Goals and Head Start Program Functioning.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is proposing a data collection as part of the ''School Readiness Goals and Head Start Program Functioning'' research project.

The purpose of this study is to improve understanding of how local Head Start and Early Head Start programs define, measure, and communicate school readiness goals, and how they use these goals in program planning to improve program functioning. The study design will include a telephone survey of program directors or designated key personnel at approximately 90 local Head Start and Early Head Start programs, followed by site visits to collect further qualitative information through interviews with program staff, oversight boards, key stakeholders and parents at a subset of 12 of these grantees. In addition, telephone interviews will be conducted with 4 Head Start directors of American Indian/Alaskan Native (AIAN) grantees.

Topics covered in the telephone survey, site visits, and qualitative interviews include: a description of school readiness goals set by local grantee; the process used to set school readiness goals; contextual factors informing choices made about school readiness goals (e.g., needs of local children and families, program and staff characteristics, and community characteristics); how programs use and analyze data about school readiness goals; how programs report progress on goals; and how school readiness goals and data inform program planning and improvement efforts.

Respondents: Head Start and Early Head Start program directors and managers closely involved with school readiness goal setting (e.g., education services coordinators); other services managers, coordinators and specialists (e.g., health or disabilities coordinators, home-based services coordinators or assistant program directors, data specialists); front-line staff (e.g., Head Start teachers, Early Head Start teachers, and home visitors); members of Head Start governing bodies and local policy councils; representatives from local education agencies; and parents with children in Head Start and Early Head Start programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Telephone Interview Recruitment Script	157	1	0.17	27	27
Telephone Interview	90	1	0.75	68	68
Interview Guide for Program Directors and Managers	24	1	1.5	36	36
Interview Guide for Other Managers, Coordinators and Specialists	60	1	1	60	60
Interview Guide with Staff	54	1	1	54	54
Interview Guide for Governing Body or Policy Council Representatives	48	1	0.75	36	36
Interview Guide with Local Education Agency Representative	12	1	1	12	12
Interview Guide for Parents	36	1	0.75	27	27
Interview Guide for AIAN Program Directors	4	1	1	4	4

Estimated Total Annual Burden Hours: 323.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2013–09095 Filed 4–17–13; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[C.F.D.A. Number: 93.591]

Standing Funding Opportunity Announcement for Family Violence Prevention and Services Grants to States for Domestic Violence Shelters and Support Services

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth, and Families (ACYF), ACF, HHS.

ACTION: This notice was originally published as Funding Opportunity Number HHH2013–ACF–ACYF–SDVC–0564 on March 5, 2013 at *http://www.acf.hhs.gov/grants/open/foa/view/HHS-2013-ACF-ACYF-FVPS-0564.*

SUMMARY: This announcement governs the proposed award of mandatory grants under the Family Violence Prevention and Services Act (FVPSA) to States (including territories and insular areas). The purpose of these grants is to: (1) assist States in efforts to increase public awareness about, and primary and secondary prevention of, family violence, domestic violence, and dating violence; and (2) assist States in efforts to provide immediate shelter and supportive services for victims of family violence, domestic violence, or dating violence (42 U.S.C. 10401 et seq.).

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in Fiscal Year (FY) 2013, 2014 and 2015.

Statutory Authority: The statutory authority for this program is 42 U.S.C. 10401 through 10414 hereinafter cited by Section number only.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Description Background

The Administration on Children, Youth and Families (ACYF) is committed to facilitating healing and recovery, and promoting the social and emotional well-being of victims, children, youth, and families who have experienced domestic violence, maltreatment, exposure to violence, and trauma. An important component of promoting well-being in this regard includes addressing the impact of trauma, which can have profound impacts on coping, resiliency, and skill development. ACYF promotes a trauma-informed approach, which involves understanding and responding to the symptoms of chronic interpersonal trauma and traumatic stress across the lifespan.

This FVPSA funding opportunity announcement (FOA), administered through ACYF's Family and Youth Services Bureau (FYSB), is designed to assist States in their efforts to support the establishment, maintenance, and expansion of programs and projects: (1) To prevent incidents of family violence, domestic violence, and dating violence; (2) to provide immediate shelter, supportive services, and access to community-based programs for victims of family violence, domestic violence, or dating violence, and their dependents; and (3) to provide specialized services for children exposed to family violence, domestic violence, or dating violence, underserved populations, and victims who are members of racial and ethnic minority populations (Section 10406(a)).

The FVPSA State Formula Grant funds shall be used to identify and provide subgrants to eligible entities for programs and projects within the State that are designed to prevent incidents of family violence, domestic violence, and dating violence by providing immediate shelter and supportive services for adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, and which may be used to provide prevention services to prevent future incidents of family violence, domestic violence, and dating violence (Section 10408 (a)).

FVPSA funds awarded to subgrantees should be used for:

- Provision of immediate shelter and related supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents, including paying for the operating and administrative expenses of the facilities for a shelter.(Section 10408(b)(1)(A)).
- Assistance in developing safety plans and supporting efforts of victims of family violence, domestic violence, or dating violence to make decisions related to their ongoing safety and well-being (Section 10408(b)(1)(B)).
- Provision of individual and group counseling, peer support groups, and referral to community-based services to assist family violence, domestic violence, and dating violence victims, and their dependents, in recovering from the effects of the violence (Section 10408(b)(1)(C)).
- Provision of services, training, technical assistance, and outreach to increase awareness of family violence, domestic violence, and dating violence, and increase the accessibility of family violence, domestic violence, and dating violence services (Section 10408(b)(1)(D)).
- Provision of culturally and linguistically appropriate services (Section 10408(b)(1)(E)).
- Provision of services for children exposed to family violence, domestic violence, or dating violence, including age-appropriate counseling, supportive services, and services for the nonabusing parent that support that parent's role as a caregiver, which may, as appropriate, include services that work with the nonabusing parent and child together (Section 10408(b)(1)(F)).
- Provision of advocacy, case management services, and information and referral services, concerning issues related to family violence, domestic violence, or dating violence intervention and prevention, including: (1) Assistance in accessing related Federal and State financial assistance programs; (2) legal advocacy to assist victims and their dependents; (3) medical advocacy, including provision of referrals for appropriate health care services (including mental health, alcohol, and drug abuse treatment), which does not include reimbursement for any health care services; (4) assistance locating and securing safe and affordable permanent housing and homelessness prevention services; (5) transportation, child care, respite care, job training and employment services, financial literacy services and education, financial planning, and related economic empowerment services; and (6) parenting and other educational services for victims and their dependents (Section 10408(b)(1)(G)).
- Provision of prevention services, including outreach to underserved populations (Section 10408(b)(1)(H)).

In the distribution of FVPSA grant funds, the State should ensure that not less than 70 percent of the funds distributed are used for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents; not less than 25 percent of the funds will be used for the purpose of providing supportive services and prevention services (Section 10408(b)(2)); and not more than 5 percent of the FVPSA grant funds should be used for State administrative costs (Section 10406(b)(1)).

Ensuring the Well-Being of Vulnerable Children and Families

ACYF is committed to facilitating healing and recovery, and promoting the social and emotional well-being of children, youth, and families who have experienced maltreatment, exposure to violence, and/or trauma. This FOA and other discretionary spending this fiscal year are designed to ensure that effective interventions are in place to build skills and capacities that contribute to the healthy, positive, and productive functioning of families.

Children, youth, and families who have experienced maltreatment, exposure to violence, and/or trauma are impacted along several domains, each of which must be addressed in order to foster social and emotional well-being and promote healthy, positive functioning:

Understanding Experiences: A fundamental aspect of the human experience is the development of a world view through which one's experiences are understood. Whether that perspective is generally positive or negative impacts how experiences are interpreted and integrated. For example, one is more likely to approach a challenge as a surmountable, temporary obstacle if his or her frame includes a sense that ''things will turn out alright.'' On the contrary, negative experiences can color how future experiences are understood. Ongoing exposure to family violence might lead children, youth, and adults to believe that relationships are generally hostile in nature and affect their ability to enter into and stay engaged in safe and healthy relationships. Interventions should seek to address how children, youth, and adults frame what has happened to them in the past and shape their beliefs about the future.

• *Developmental Tasks:* People grow physically and psychosocially along a fairly predictable course, encountering normal challenges and establishing competencies as they pass from one developmental stage to another. However, adverse events have a marked effect on the trajectory of normal social and emotional development, delaying the growth of certain capacities, and, in many cases, accelerating the maturation of others. Intervention strategies must be attuned to the developmental impact of negative experiences and address related strengths and deficits to ensure children, youth, and families develop along a healthy trajectory.

• *Coping Strategies:* The methods that children, youth, and families develop to manage challenges both large and small are learned in childhood, honed in adolescence, and practiced in adulthood. Those who have been presented with healthy stressors and opportunities to overcome them with appropriate encouragement and support are more likely to have an array of positive, productive coping strategies available to them as they go through life. For children, youth, and families who grow up in or currently live in unsafe, unpredictable environments, the coping strategies that may have been protective in that context may not be appropriate for safer, more regulated situations. Interventions should help children, youth, and families transform maladaptive coping methods into healthier, more productive strategies.

• *Protective Factors:* A wealth of research has demonstrated that the presence of certain contextual factors (e.g., supportive relatives, involvement in after-school activities) and characteristics (e.g., self-esteem, relationship skills) can moderate the impacts of past and future negative experiences. These protective factors are fundamental to resilience; building them is integral to successful intervention with children, youth, and families.

The skills and capacities in these areas support children, youth, and families as challenges, risks, and opportunities arise. In particular, each domain impacts the capacity of children, youth, and families to establish and maintain positive relationships with caring adults and supportive peers. The necessity of these relationships to social and emotional well-being and lifelong success in school, community, and at home cannot be overstated and should be central to all interventions with vulnerable children, youth, and families.

An important component of promoting social and emotional well-being includes addressing the impact of trauma, which can have a profound effect on the overall functioning of children, youth, and families. ACYF promotes a trauma-informed approach, which involves understanding and responding to the symptoms of chronic interpersonal trauma and traumatic stress across the domains outlined above, as well as the behavioral and mental health sequelae of trauma.

ACYF anticipates a continued focus on social and emotional well-being as a critical component of its overall mission to ensure positive outcomes for all children, youth, and families.

Annual FVPSA State Administrators Grantee Meeting

FVPSA State Administrators shall plan to attend the annual grantee meeting. The State FVPSA Administrators meeting is a training and technical assistance activity focusing on FVPSA administrative issues as well as the promotion of evidence informed and promising practices to address family violence, domestic violence, or dating violence. Subsequent correspondence will advise the FVPSA State Administrators of the date, time, and location of their grantee meeting.

Client Confidentiality

In order to ensure the safety of adult, youth, and child victims of family violence, domestic violence, or dating violence, and their families, FVPSA-funded programs must establish and implement policies and protocols for maintaining the confidentiality of records pertaining to any individual provided domestic violence services. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used by the State or other FVPSA grantees or subgrantees (Section 10406(c)(5)).

In the annual grantee Performance Progress Report (PPR), States and subgrantees must collect unduplicated data from each program rather than unduplicated data across programs or statewide. No client-level data should be shared with a third party, regardless of encryption, hashing, or other data security measures, without a written, time-limited release as described in section 10406(c)(5). The address or location of any FVPSA-supported shelter facility shall not be made public except with written authorization of the person or persons responsible for the operation of such shelter, (See Section 10406(c)(5)(H)) and the confidentiality of records pertaining to any individual provided domestic violence services by any FVPSA-supported program will be strictly maintained.

Coordinated and Accessible Services

It is essential that community service providers, including those serving or representing underserved communities, are involved in the design and improvement of intervention and prevention activities identified in the state plan. Coordination and collaboration among victim services providers; community-based, culturally specific, and faith-based services providers; housing and homeless services providers; and Federal, State, and local public officials and agencies is needed for an effective state planning process and to provide more responsive and effective services to victims of family violence, domestic violence, and dating violence, and their dependents. It is expected that the communities and organizations noted above will be included in committees or other activities to ensure they are part of the planning and decision making to create and maintain fully coordinated and accessible services.

To promote a more effective response to family violence, domestic violence, and dating violence, States receiving funds under this grant announcement must collaborate with State Domestic Violence Coalitions and community-based organizations and should collaborate with tribes, tribal organizations, and service providers, to address the needs of victims of family violence, domestic violence, and dating violence, and for those who are members of racial and ethnic minority populations and underserved populations (See Section 10407(a)(2)).

To serve victims most in need and to comply with Federal law, services must be widely accessible to all. Service providers must not discriminate on the basis of age, disability, sex, race, color, national origin, or religion (Section 10406(c)(2)). The HHS Office for Civil Rights provides guidance to grantees complying with these requirements.

Please see *http://www.hhs.gov/ocr/civilrights* for HHS Office of Civil Rights guidance on serving immigrant victims and *http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html* for guidance on the Americans with Disabilities Act and Rehabilitation Act of 1973. Services must also be provided on a voluntary basis; receipt of emergency shelter or housing must not be conditioned on participation in supportive services (Section 10408(d)(2)).

Definitions

States should use the following definitions in carrying out their programs (Section 10402).

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Family Violence: Any act or threatened act of violence, including any forceful detention of an individual that: (a) results or threatens to result in physical injury; and (b) is committed by a person against another individual (including an elderly individual) to or with whom such person is related by blood, or is or was related by marriage, or is or was otherwise legally related, or is or was lawfully residing.

Shelter: The provision of temporary refuge and supportive services in compliance with applicable State law (including regulation) governing the provision, on a regular basis, of shelter, safe homes, meals, and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents.

Supportive Services: Services for adult and youth victims of family violence, domestic violence, or dating violence, and dependents exposed to family violence, domestic violence, or dating violence, that are designed to:

• Meet the needs of victims of family violence, domestic violence, or dating violence, and their dependents, for short-term, transitional, or long-term safety; and

• Provide counseling, advocacy, or assistance for victims of family violence, domestic violence, or dating violence, and their dependents.

II. Award Information

For FY 2013, HHS will make available for grants to designated State agencies 70 percent of the amount appropriated under section 10403(a)(1) of FVPSA, which is not reserved under Section 10403(a)(2). In FY 2012, ACYF awarded $90,682,686 to State agencies for these purposes. In separate announcements, ACYF will allocate 10 percent of the foregoing appropriation to tribes and tribal organizations for the establishment and operation of shelters, safe houses, and the provision of supportive services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, needs assessment, and advocacy services, among other activities with local domestic violence programs, and to encourage appropriate responses to domestic violence within the States. Six percent of the amount appropriated under section 10403(c) of FVPSA, and reserved under section 10403(a)(2)(c), will be available in FY 2013 to continue the support for the two National Resource Centers (NRCs), four Special Issue Resource Centers (SIRCs), and the three Culturally Specific Special Issue Resource Centers (CSSIRCs). Additionally, funds appropriated under FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects, as well as the ongoing operation of the National Domestic Violence Hotline.

State Allocation

FVPSA grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be $600,000, with the remaining funds allotted to each State on the same ratio as the population of the State to the population of all States (Section 10405(a)(2)). State populations are determined on the basis of the most recent census data available to the Secretary of HE–IS, and the Secretary shall use for such purpose, if available, the annual current interim census data produced by the Secretary of Commerce pursuant to 13 U.S.C. 181.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands will each receive grants of not less than one-eighth of one percent of the amount appropriated for formula grants to States (Section 10405(a)(1)).

Match

Grants funded by the States will meet the matching requirements in Section 10406(c)(4). No grant shall be made to any entity other than a State unless the entity agrees that, with respect to the cost to be incurred by the entity in carrying out the program or project for which the grant is awarded, the entity will make available (directly or through donations from public or private entities) non-Federal contributions in an amount that is not less than $1 for every $5 of federal funds provided under the grant. The non-Federal contributions required may be in cash or in kind.

Length of Project Periods

24 Months.

Expenditure Period

FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the following fiscal year, i.e., FY 2013 funds may be used for expenditures from October 1, 2012, through September 30, 2014; FY 2014 funds from October 1, 2013, through September 30, 2015; and FY 2015 funds from October 1, 2014, through September 30, 2016. Funds will be available for obligations only through FY 2013: September 30, 2014; FY 2014: September 30, 2015 and FY 2015: September 30, 2016, and must be liquidated by FY 2013: December 30, 2014; FY 2014: December 30, 2015; and FY 2015: December 30, 2016.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2013 grant funds that are made available to the States through re-allotment, under section 10405(d), must be expended by the State no later than September 30, 2014; FY 2014 funds must be expended no later than September 30, 2015; and FY 2015 funds must be expended no later than September 30, 2016.

III. Eligibility Information

''States,'' as defined in section 10402 of FVPSA, are eligible to apply for funds. The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa have applied for funds as a part of their consolidated grant under the Social Services Block Grant. These jurisdictions need not submit an application under this program announcement if they choose to have their allotment included as part of a consolidated grant application; however, they are required to submit a Performance Progress Report using the standardized format.

Additional Information on Eligibility

DUNS Number Requirement

Data Universal Numbering System (DUNS) Number is the nine-digit, or thirteen-digit (DUNS + 4), number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities.

All applicants and sub-recipients must have a DUNS number at the time of application in order to be considered for a grant or cooperative agreement. A DUNS number is required whether an applicant is submitting a paper application or using the Government-wide electronic portal, *www.Grants.gov.* A DUNS number is required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs. A DUNS number may be acquired at no cost online at *http://fedgov.dnb.com/webform.* To acquire a DUNS number by phone, contact the D&B Government Customer Response Center: U.S. and U.S. Virgin Islands: 1–866–705–5711. Alaska and Puerto Rico: 1–800–234–3867 (Select Option 2, then Option 1) Monday–Friday 7 a.m. to 8 p.m., CST.

The process to request a DUNS Number by telephone will take between 5 and 10 minutes.

SAM Requirement (*www.Sam.gov*)

The System for Award Management (SAM) at *www.sam.gov* is a new system that consolidates the capabilities of a number of systems that support Federal procurement and award processes. Phase 1 of SAM includes the capabilities previously provided via Central Contractor Registration (CCR)/Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System (EPLS).

SAM is the Federal registrant database and repository into which an entity must provide information required for the conduct of business as a recipient. The former CCR Web site is no longer be available. All information previously held in the Central Contractor Registration (CCR) system has been migrated to *SAM.gov.*

Applicants may register at *www.sam.gov* or by phone at 1–866–606–8220. Registration assistance is available through the ''Help'' tab at *www.sam.gov* or by phone at 1–866–606–8220.

Applicants are strongly encouraged to register at SAM well in advance of the application due date. Registration at *SAM.gov* must be updated annually.

Note: It can take 24 hours or more for updates to registrations at *SAM.gov* to take effect. An entity's registration will become active after 3–5 days. Therefore, check for active registration well before the application due date and deadline. An applicant can view their registration status by visiting *https://www.bpn.gov/PublicSearch.aspx* and searching by their organization's DUNS number.

See the SAM Quick Guide for Grantees at *https://www.sam.gov/sam/transcript/SAM_Quick_Guide_Grants_Registrations-v1.6.pdf* requires all entities that plan to apply for, and ultimately receive, Federal grant fluids from any HHS Agency, or receive subawards directly from recipients of those grant funds to:

- Be registered in at *Sam.gov* prior to submitting an application or plan;
- Maintain an active registration at *www.sam.gov* with current information at all times during which it has an active award or an application or plan under consideration by an HHS agency; and
- Provide its active DUNS number in each application or plan it submits to an HHS agency.

ACF is prohibited from making an award to an applicant that has not complied with these requirements. If, at the time of an award is ready to be made, and the intended recipient has not complied with these requirements, ACF:

- May determine that the applicant is not qualified to receive an award; and
- May use that determination as a basis for making an award to another applicant.

Additionally, all first-tier subaward recipients (i.e., direct subrecipients) must have an active DUNS number at the time the subaward is made.

IV. Application Requirements

Content of Application Submission

The State's application must be submitted by the chief executive officer of the State and must contain the following information or documentation (Section 10407(a)(1)):

(1) The name and complete address of the State agency; the name and contact information for the official designated as responsible for the administration of FVPSA programs and activities relating to family violence, domestic violence, and dating violence that are carried out by the State and for coordination of related programs within the State; the name and contact information for a contact person if different from the designated official (Section 10407(a)(2)(G)).

(2) A plan describing how the State will involve community-based organizations whose primary purpose is to provide culturally appropriate services to underserved populations, including how such community-based organizations can assist the State in identifying and addressing the unmet needs of such populations, including involvement in the State planning process and other ongoing communications (Section 10407(a)(2)(E)).

(3) A plan describing how the State will provide specialized services including trauma-informed services for children exposed to family violence, domestic violence, or dating violence, underserved populations, and victims who are members of racial and ethnic minority populations (Section 10406(a)(3)).

(4) A plan describing in detail how the needs of underserved populations will be met (Section 10406(a)(3)). ''Underserved populations'' include populations underserved because of geographic location (such as rural isolation); underserved racial and ethnic populations; populations underserved because of special needs (such as language bathers, disabilities, immigration status, or age); lesbian, gay, bisexual, or transgender (LGBT) individuals; at-risk youth; or victims with disabilities and any other population determined to be underserved by the Statewide needs assessment, the state planning process, or the Secretary of HHS (Section 10402(14)). The State plan should:

(a) Identify which populations in the State are currently underserved, and the process used to identify underserved population; describe those that are being targeted for outreach and services; and provide a brief explanation of why those populations were selected to receive outreach and services.

(b) Describe the outreach plan, including the domestic violence training to be provided, the means for providing technical assistance and support, and the leadership role played by those representing and serving the underserved populations in question.

(c) Describe the specific services to be provided or enhanced, including new shelters or services, improved access to shelters or services, or new services for underserved populations such as victims from communities of color, immigrant victims, LGBT individuals, adolescents, at-risk youth, or victims with disabilities.

(5) Include a description of how the State plans to use the grant funds; a description of the target populations; the number of shelters to be funded; the number of nonresidential programs to be funded; the services the State's subgrantees will provide; and the expected results from the use of the grant funds as required by Sections 10407(a)(2)(F) and 10408(b).

(6) Describe the plan to assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State (Section 10407(a)(2)(C)).

(7) Provide complete documentation of consultation with and participation of the State Domestic Violence Coalition in the State planning process and monitoring of the distribution of grants and the administration of grant programs and projects (Section 10407(a)(2)(D)).

(8) Provide complete documentation of policies, procedures, and protocols that ensure personally identifying information will not be disclosed when providing statistical data on program activities and program services; the confidentiality of records pertaining to any individual provided family violence prevention services by any FVPSA-supported program will be maintained; and the address or location of any FVPSA-supported shelter will not be made public without the written authorization of the person or persons responsible for the operation of such shelter (Sections 10407(a)(2)(A) and 10406(c)(5)).

(9) Provide a copy of the law or procedures, such as a process for obtaining an order of protection, that the State has implemented for the barring of an abuser from a shared household (Section 10407(a)(2)(H)).

(10) Applicants must include a signed copy of the assurances as required by Section 10407(a)(2)(B) (See Appendix A).

Forms, Assurances, Certifications and Policy

Applicants seeking financial assistance under this announcement must submit the listed Standard Forms (SFs), assurances, and certifications. All required Standard Forms and certifications are available at *Grants.gov Forms Repository* unless specified otherwise. Each application must provide a signed copy of the additional assurance and policy in Appendices A and B, respectively.

Forms/certifications	Description	Where found
Certification Regarding Lobbying	Required of all applicants at the time of their application. If not available with the application, it must be submitted prior to the award of the grant.	Available at *http://www.acf.hhs.gov/grants-forms.*
SF–LLL—Disclosure of Lobbying Activities	If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the applicant shall complete and submit the SF–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Applicants must furnish an executed copy of the Certification Regarding Lobbying prior to award.	"Disclosure Form to Report Lobbying" is available at *http://www.acf.hhs.gov/grants-forms.*
Survey on Ensuring Equal Opportunity for Applicants.	Non-profit private organizations (not including private universities) are encouraged to submit the survey with their applications. Submission of the survey is voluntary. Applicants applying electronically may submit the survey along with the application as part of an appendix or as a separate document. Hard copy submissions should include the survey in a separate envelope.	Available at *http://www.acf.hhs.gov/grants-forms.*
The needs of lesbian, gay, bisexual, transgender, and questioning youth are taken into consideration in applicants program design.	See Appendix B for submission requirements	See Appendix B for the complete policy description.

Paperwork Reduction Disclaimer

As required by the Paperwork Reduction Act, 44 U.S.C. 3501–3520, the public reporting burden for the project description is estimated to average 10 hours per response hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The Project Description information collection is approved under OMB control number 0970–0280, which expires November 30, 2014. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Intergovernmental Review of Federal Programs

For States, this program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

Funding Restrictions

The Consolidated Appropriations Act, 2012 (Pub. L. 112–74), enacted December 23, 2011, limits the salary amount that may be awarded and charged to ACF mandatory and discretionary grants. Award funds issued under this announcement may not be used to pay the salary, or any percentage of salary, to an individual at a rate in excess of Executive Level II. The Executive Level II salary of the Federal Executive Pay scale is $179,700 *(http://www.opm.gov/oca/12tables/html/ex.asp)* his amount reflects an individual's base salary exclusive of fringe benefits and any income that an individual may be permitted to earn outside of the duties to the applicant organization. This salary limitation also applies to subawards/subcontracts under an ACF mandatory and discretionary grant.

Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are considered unallowable costs under grants awarded under this announcement. Construction is not an allowable activity or expenditure under this grant award.

Application Submission

Applications should be sent or delivered to: Administration for Children and Families, Administration on Children, Youth and Families, Family and Youth Services Bureau, Family Violence Prevention and Services Program, ATTN: Edna James, 1250 Maryland Avenue SW., Suite 8214, Washington, DC 20024.

V. Award Administration Information

Approval/Disapproval of State Application

The Secretary of HHS will approve any application that meets the requirements of FVPSA and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a 6-month period providing an opportunity for the applicant to correct any deficiencies. The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

Administrative and National Policy Requirements

Awards issued under this announcement are subject to the uniform administrative requirements and cost principles of 45 CFR part 74 (Awards And Subawards To Institutions Of Higher Education, Hospitals, Other Nonprofit Organizations, And Commercial Organizations) or 45 CFR part 92 (Grants And Cooperative Agreements To State, Local, And Tribal Governments). The Code of Federal Regulations (CFR) is available at *www.gpo.gov.*

An application funded with the release of Federal funds through a grant award, does not constitute, or imply, compliance with Federal regulations. Funded organizations are responsible for ensuring that their activities comply with all applicable Federal regulations.

Equal Treatment for FaithBased Organizations

Grantees are also subject to the requirements of 45 CFR 87.1(c), Equal Treatment for Faith-Based Organizations, which says, ''Organizations that receive direct financial assistance from the [Health and Human Services] Department under any Department program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department.'' Therefore, organizations must take steps to completely separate the presentation of any program with religious content from the presentation of the Federally funded program by time or location *in such a way that it is clear that the two programs are separate and distinct.* If separating the two programs by time but presenting them in the same location, one program must *completely* end before the other program begins.

A faith-based organization receiving Ill-IS funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services funded with Federal funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal funds retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS-funded activities.

Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, ''Understanding the Regulations Related to the Faith-Based and Neighborhood partnerships Initiative'' are available at *www.hhs.gov/partnerships/about/regulations/.* Additional information, resources, and tools for faith-based organizations are available through The Center for Faith-based and Neighborhood Partnerships Web site at *www.hhs.gov/partnerships/index.html* and at the *Administration for Children & Families: Toolkit for Faith-based and Community Organizations* at *www.acf.hhs.gov/programs/ocs/resource/capacity-building-toolkits-for-faith-based-and-community-organizations.*

Requirements for DrugFree Workplace

The Drug-Free Workplace Act of 1988 (41 U.S.C. 8102 et seq.) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. By signing the application, the Authorizing Official agrees that the grantee will provide a drug-free workplace and will comply with the requirement to notify ACF if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government-wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR part 182; HHS implementing regulations are set forth in 2 CFR 382.400. All recipients of ACF grant funds must comply with the requirements in Subpart B—Requirements for Recipients Other Than Individuals, 2 CFR 382.225. The rule is available at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=18b5801410be6af416dc258873ffb7ec;rgn=div2;view=text;node=20091112%3A1.1;idno=49;cc=ecfr.*

Debarment and Suspension

HHS regulations published in 2 CFR part 376 implement the government-wide debarment and suspension system guidance (2 CFR part 180) for HHS' non-procurement programs and activities.

''Non-procurement transactions'' include, among other things, grants, cooperative agreements, scholarships, fellowships, and loans. ACF implements the HHS Debarment and Suspension regulations as a term and condition of award. Grantees may decide the method and frequency by which this determination is made and may check the Excluded Parties List System (EPLS) located at *www.sam.gov/* checking the EPLS is not required. More information is available at *https://www.acf.hhs.gov/grants-forms.*

Pro-Children Act

The Pro-Children Act of 2001, 20 U.S.C. 7181 through 7184, imposes restrictions on smoking in facilities where federally funded children's services are provided. HHS grants are subject to these requirements only if they meet the Act's specified coverage. The Act specifies that smoking is prohibited in any indoor facility (owned, leased, or contracted for) used for the routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18. In addition, smoking is prohibited in any indoor facility or portion of a facility (owned, leased, or contracted for) used for the routine or regular provision of federally funded health care, day care, or early childhood development, including Head Start services to children under the age of 18. The statutory prohibition also applies if such facilities are constructed, operated, or maintained with Federal funds. The statute does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, portions of facilities used for inpatient drug or alcohol treatment, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per violation and/or the imposition of an administrative compliance order on the responsible entity.

VI. Reporting Requirements

Performance Progress Reports (PPR)

States are required to submit an annual performance progress report to ACYF describing the activities carried out and an assessment of the effectiveness of those activities in achieving the purposes of the grant (Section 10406(d)). Further guidance regarding the assessment requirement is included in the PPR. A section of this performance report must be completed by each grantee or subgrantee that provided program services and activities. State grantees should compile subgrantee performance reports into a comprehensive report for submission. A copy of the required PPR can be found at *https://www.acf.hhs.gov/programs/fysb/resource/ppr-state-fvpsa.* the past, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa have applied for FVPSA funds as a part of their consolidated grant under the Social Services Block Grant. These jurisdictions need not submit an application under this program announcement if they choose to have their allotment included as part of a consolidated grant application; however, they are required to submit an annual PPR using the standardized format.

PPRs for the States and Territories are due on an annual basis at the end of the calendar year (December 29). Grantees should submit their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi/* with a copy sent to: Administration for Children and Families, Administration on Children, Youth and Families, Family and Youth Services Bureau, Family Violence Prevention and Services Program, ATTN: Edna James, 1250 Maryland Avenue SW., Room 8214, Washington, DC 20024.

Please note that section 10407(bX4) of FVPSA requires HHS to suspend funding for an approved application if any State applicant fails to submit an annual PPR or if the funds are expended for purposes other than those set forth under this announcement.

Federal Financial Reports (FFR)

Grantees must submit annual Financial Status Reports (SF–425). The first SF–425A is due December 29, 2013, 2014, and 2015. The final SF–425A is due December 29, 2014, 2015, and 2016. SF–425A can be found at: *http://acf.gov/grants-forms.*

Completed reports may be mailed to: Deborah Bell, Division of Mandatory Grants Office of Grants Management Administration for Children and Families, 370 LEnfant Promenade SW., 6th Floor, Washington, DC 20447. Grantees have the option of submitting their reports online through the Online Data Collection (OLDC) system at the following address: *https://extranet.acf.hhs.gov/ssi.*

Failure too submit reports on time may be a basis for withholding grant funds, or suspension or termination of the grant. All funds reported as unobligated after the obligation period will be recouped.

Finable versions of the SF–425 form in Adobe PDF and MS-Excel formats, along with instructions, are available at *http://acf.gov/grants-forms* and at *http://www.whitehouse.gov/omb/grants_forms.*

FFATA Subaward and Executive Compensation

Awards issued as a result of this funding opportunity may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170. See ACF's *Award Term for Federal Financial Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting Requirement* implementing this requirement and additional award applicability information.

ACF has implemented the use of the SF–428 *Tangible Property Report* and the SF–429 *Real Property Status Report* for all grantees. Both standard forms are available at *http://www.whitehouse.gov/omb/grants_forms.*

VII. Agency Contact

Program Office Contact

FOR FURTHER INFORMATION CONTACT: Edna James at (202) 205–7750 or *Edna.James@acf.hhs.gov.*

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

Appendix A

Assurances of Compliance with Grant Requirements

The undersigned grantee certifies that:

(1) Grant funds under the Family Violence Prevention Services Act (FVPSA) will be distributed to local public agencies or nonprofit private organizations (including faith-based and charitable organizations, community-based organizations, and voluntary associations) that assist victims of family violence, domestic violence, or dating violence (as defined in Section 10402(2–4), and their dependents, and have a documented history of effective work concerning family violence, domestic violence, or dating violence (Section 10408(c)).

(2) Grant funds will be used for programs and projects within the State that are designed to prevent incidents of family violence, domestic violence, and dating violence by providing immediate shelter and supportive services and access to community-based programs for adult and youth victims, as well as specialized services for children exposed to domestic violence, underserved populations, and those who are members of racial and ethnic minority populations (as defined in Section 10406(a)(1–3)).

(3) In distributing the funds, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit,

private organizations, and that have as their primary purpose the operation of shelters for victims of family violence, domestic violence, and dating violence, and their dependents or those which provide counseling, advocacy, and self-help services to victims of family violence, domestic violence, and dating violence, and their dependents (Section 10407(a)(2)(B)(iii)).

(4) Not less than 70 percent of the funds distributed shall be for the primary purpose of providing immediate shelter and supportive services to adult and youth victims of family violence, domestic violence, or dating violence, and their dependents (Section 10408(b)(2)).

(5) Not less than 25 percent of the funds distributed shall be for the purpose of providing supportive services and prevention services as described in Section 10408(b)(2)to victims of family violence, domestic violence, or dating violence, and their dependents).

(6) Not more than 5 percent of the funds will be used for State administrative costs (Section 10407(a)(2)(b)(i)).

(7) The State grantee is in compliance with the statutory requirements of Section 10407(a)(2)(C), regarding the equitable distribution of grants and grant funds within the State and between urban and rural areas within the State.

(8) The State will consult with and provide for the participation of the State Domestic Violence Coalition in the planning and monitoring of the distribution of grant funds and the administration of the grant programs and projects (Section 10407(a)(2)(D)).

(9) Grant funds made available under this program by the State will not be used as direct payment to any victim of family violence, domestic violence, or dating violence, or to any dependent of such victim (Section 10408(d)(1)).

(10) No income eligibility standard will be imposed on individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out the FVPSA (Section 10406(c)(3)).

(11) No fees will be levied for assistance or services provided with funds appropriated to carry out the FVPSA (Section 10406(c)(3)).

(12) The address or location of any shelter or facility assisted under the FVPSA that otherwise maintains a confidential location will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public (Section 10406(c)(5)(H)).

(13) The applicant has established policies, procedures, and protocols to ensure compliance with the provisions of Section 10406(c)(5) regarding non-disclosure of confidential or private information (Section 10407(a)(2)(A)).

(14) Pursuant to Section 10406(c)(5), the applicant will comply with requirements to ensure the non-disclosure of confidential or private information, which include, but are not limited to: (1) Grantees will not disclose any personally identifying information collected in connection with services requested (including services utilized or denied), through grantee's funded activities or reveal personally identifying information without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for the FVPSA-funded activities or any other Federal or State program and in accordance with Section 10406(c)(5)(B)(ii); (2) grantees will not release information compelled by statutory or court order unless adhering to the requirements of Section10406(c)(5)(C); (3) grantees may share non-personally identifying information in the aggregate for the purposes enunciated in Section 10406(c)(5)(D)(i) as well as for other purposes found in Section 10406(c)(5)(D)(ii) and (iii).

(15) Grants funded by the State in whole or in part with funds made available under the FVPSA will prohibit discrimination on the basis of age, disability, sex, race, color, national origin, or religion (Section 10406(c)(2)).

(16) Funds made available under the FVPSA will be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the objectives of the FVPSA (Section 10406(c)(6)).

(17) Receipt of supportive services under the FVPSA will be voluntary. No condition will be applied for the receipt of emergency shelter as described in Section 10408(d)(2)).

(18) The State grantee has a law or procedure to bar an abuser from a shared household or a household of the abused person, which may include eviction laws or procedures (Section 10407(a)(2)(H)).

Signature

Title

Organization

Appendix B

LGBTQ Accessibility Policy

As the Authorized Organizational Representative (AOR) signing this application on behalf of *[Insert full, formal name of applicant organization]*

I hereby attest and certify that:

The needs of lesbian, gay, bisexual, transgender, and questioning program participants are taken into consideration in applicant's program design. Applicant considered how its program will be inclusive of and non-stigmatizing toward such participants. If not already in place, awardee and, if applicable, sub-awardees must establish and publicize policies prohibiting harassment based on race, sexual orientation, gender, gender identity (or expression), religion, and national origin. The submission of an application for this funding opportunity constitutes an assurance that applicants have or will put such policies in place within 12 months of the award. Awardees should ensure that all staff members are trained to prevent and respond to harassment or bullying in all forms during the award period. Programs should be prepared to monitor claims, address them seriously, and document their corrective action(s) so all participants are assured that programs are safe, inclusive, and non-stigmatizing by design and in operation. In addition, any sub-awardees or subcontractors:

- Have in place or will put into place within 12 months of the award policies prohibiting harassment based on race, sexual orientation, gender, gender identity (or expression), religion, and national origin;
- Will enforce these policies;
- Will ensure that all staff will be trained during the award period on how to prevent and respond to harassment or bullying in all forms, and;
- Have or will have within 12 months of the award, a plan to monitor claims, address them seriously, and document their corrective action(s).

Insert Date of Signature:
Print Name and Title of the AOR:
Signature of AOR:

[FR Doc. 2013–08711 Filed 4–17–13; 8:45 am]

BILLING CODE 4184–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0150]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the guidance ''Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims,'' which is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension.

DATES: Submit either electronic or written comments on the collection of information by June 17, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug

Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–7726, *Ila.mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims—(OMB Control Number 0910–0670)—Extension

This guidance is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension. With few exceptions, current labeling for antihypertensive drugs includes only the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. FDA believes that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and improved cardiovascular outcomes more explicit in labeling. The intent of the guidance is to provide common labeling for antihypertensive drugs except where differences are clearly supported by clinical data. The guidance encourages applicants to submit labeling supplements containing the new language.

The guidance contains two provisions that are subject to OMB review and approval under the PRA, and one provision that would be exempt from OMB review:

(1) Section IV.C of the guidance requests that the CLINICAL STUDIES section of the Full Prescribing Information of the labeling should include a summary of placebo or active-controlled trials showing evidence of the specific drug's effectiveness in lowering blood pressure. If trials demonstrating cardiovascular outcome benefits exist, those trials also should be summarized in this section. Table 1 in Section V of the guidance contains the specific drugs for which FDA has concluded that such trials exist. If there are no cardiovascular outcome data to cite, one of the following two paragraphs should appear:

''There are no trials of [DRUGNAME] or members of the [name of pharmacologic class] pharmacologic class demonstrating reductions in cardiovascular risk in patients with hypertension,'' or ''There are no trials of [DRUGNAME] demonstrating reductions in cardiovascular risk in patients with hypertension, but at least one pharmacologically similar drug has demonstrated such benefits.''

In the latter case, the applicant's submission generally should refer to table 1 in section V of the guidance. If the applicant believes that table 1 is incomplete, it should submit the clinical evidence for the additional information to Docket No. FDA–2008–D–0150. The labeling submission should reference the submission to the docket. FDA estimates that no more than one submission to the docket will be made annually from one company, and that each submission will take approximately 10 hours to prepare and submit. Concerning the recommendations for the CLINICAL STUDIES section of the Full Prescribing Information of the labeling, FDA regulations at §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) require such labeling, and the information collection associated with these regulations is approved by OMB under OMB control number 0910–0572.

(2) Section VI.B of the guidance requests that the format of cardiovascular outcome claim prior approval supplements submitted to FDA under the guidance should include the following information:

1. A statement that the submission is a cardiovascular outcome claim supplement, with reference to the guidance and related Docket No. FDA–2008–D–0150.
2. Applicable FDA forms (e.g., 356h, 3397).
3. Detailed table of contents.
4. Revised labeling:

a. Include draft revised labeling conforming to the requirements in §§ 201.56 and 201.57;

b. Include marked-up copy of the latest approved labeling, showing all additions and deletions, with annotations of where supporting data (if applicable) are located in the submission.

FDA estimates that approximately 20 cardiovascular outcome claim supplements will be submitted annually from approximately 8 different companies, and that each supplement will take approximately 20 hours to prepare and submit. The guidance also recommends that other labeling changes (e.g., the addition of adverse event data) should be minimized and provided in separate supplements, and that the revision of labeling to conform to §§ 201.56 and 201.57 may require substantial revision to the ADVERSE REACTIONS or other labeling sections.

(3) Section VI.C of the guidance states that applicants are encouraged to include the following statement in promotional materials for the drug.

''[DRUGNAME] reduces blood pressure, which reduces the risk of fatal and nonfatal cardiovascular events, primarily strokes and myocardial infarctions. Control of high blood pressure should be part of comprehensive cardiovascular risk management, including, as appropriate, lipid control, diabetes management, antithrombotic therapy, smoking cessation, exercise, and limited sodium intake. Many patients will require more than one drug to achieve blood pressure goals.''

The inclusion of this statement in the promotional materials for the drug would be exempt from OMB review based on 5 CFR 1320.3(c)(2), which states that ''The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included * * *'' within the definition of ''collection of information.''

FDA requests public comments on the information collection provisions described in this document and set forth in the following table:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission to Docket Number FDA–2008–D–0150	1	1	1	10	10
Cardiovascular Outcome Claim Supplement Submission	8	2.5	20	20	400
Total					410

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09093 Filed 4–17–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2001–P–0238, FDA–2010–P–0526, FDA–2010–P–0540, FDA–2011–P–0473]

Determination That the OXYCONTIN (Oxycodone Hydrochloride) Drug Products Covered by New Drug Application 20–553 Were Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that OXYCONTIN (oxycodone hydrochloride) extended-release tablets (10 milligrams (mg), 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg) approved under new drug application (NDA) 20–553 were withdrawn from sale for reasons of safety or effectiveness. The Agency will not accept or approve abbreviated new drug applications (ANDAs) for products that reference NDA 20–553.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6368, Silver Spring, MD 20993–0002, 301–796–3522.

SUPPLEMENTARY INFORMATION:

I. Background

In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 U.S.C. 355(j)(7)(C); 21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made before approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

OXYCONTIN (oxycodone hydrochloride) extended-release tablets, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg (original OxyContin), are the subject of NDA 20–553, held by Purdue Pharma LP (Purdue) and initially approved on December 12, 1995. A reformulated version of these products, OXYCONTIN (oxycodone hydrochloride) extended-release tablets, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, and 80 mg (reformulated OxyContin), are the subject of NDA 22–272, also held by Purdue and initially approved on April 5, 2010. Reformulated OxyContin was developed with physicochemical properties that are intended to make the tablet more difficult to manipulate for purposes of abuse or misuse. Both original and reformulated OxyContin are opioid agonist products indicated for the management of moderate to severe pain when a continuous, around-the-clock opioid analgesic is needed for an extended period of time.

In correspondence dated August 10, 2010, Purdue notified FDA that it had ceased shipment of original OxyContin, and FDA subsequently moved original OxyContin to the ''Discontinued Drug Product List'' section of the Orange Book. On April 16, 2013, FDA approved a supplemental application for reformulated OxyContin, approving changes to the product labeling that describe certain abuse-deterrent properties of the reformulated product.

Several parties have submitted citizen petitions under 21 CFR 10.30, requesting that the Agency determine whether original OXYCONTIN (oxycodone hydrochloride) extended-release tablets were voluntarily withdrawn from sale for reasons other than safety or effectiveness.[1]

Based on the information available at this time, FDA has determined under § 314.161 that original OxyContin was

[1] Varam, Inc., Docket No. 2011–P–0473 (June 9, 2011) (10, 15, 20, 30, 40, 50, 80, and 160 mg); Sheppard, Mullin, Richter & Hampton LLP, Docket No. 2010–P–0540 (Oct. 8, 2010) (10, 15, 20, 30, 40, 60, and 80 mg); Lachman Consultant Services, Inc., Docket No. FDA–2010–P–0526) (Sept. 30, 2010) (10, 15, 20, 30, 40, 60, 80, and 160 mg). Lachman also submitted a petition in 2001 concerning just Purdue's 2001 withdrawal of the 160 mg strength. Docket No. FDA–2001–P–0473 (formerly Docket No. 2001P–0426) (Sept. 18, 2001).

withdrawn from sale for reasons of safety or effectiveness. FDA has reached this determination following a careful review and analysis of the following information: (1) The citizen petitions described previously; (2) the comments submitted to the dockets associated with these petitions; (3) the Agency records and other information concerning original and reformulated OxyContin and the withdrawal of original OxyContin; and (d) data, literature, and other information concerning postmarketing adverse events associated with original OxyContin, reformulated OxyContin, and other extended-release oxycodone products.

II. Initiatives To Address Abuse of Opioid Analgesics

Opioid analgesics are an important component of modern pain management. Abuse and misuse of these products, however, has grown into a public health epidemic. According to the Centers for Disease Control and Prevention, sales of prescription opioids in the United States increased over 300 percent from 1999 to 2008 (Ref. 1). Overdose deaths involving these products increased commensurately over the same period, from 4,000 to 14,800 (Refs. 1 and 2). In 2008 prescription opioids were involved in more overdose deaths than heroin and cocaine combined (Ref. 3). In 2010 the number of overdose deaths in which prescription opioids were involved rose to 16,651, which represented more than 75 percent of all overdose deaths involving prescription drugs (Ref. 4).

FDA, together with other Federal agencies, is working to address this large and growing problem while ensuring that patients in pain have appropriate access to opioid analgesics. FDA has worked to improve the labeling of OxyContin and other opioid analgesics to better warn prescribers and patients of the serious risks associated with abuse and misuse. FDA also has worked extensively with the sponsors of OxyContin and other extended-release or long-acting prescription (ER/LA) opioid analgesics to address these risks through a classwide risk evaluation and mitigation strategy (REMS) *http://www.fda.gov/downloads/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/UCM311290.pdf.*

This REMS, approved on July 9, 2012, requires sponsors of ER/LA opioids to make available training for health care professionals on proper prescribing practices and also to distribute educational materials to prescribers and patients on the safe use of these medications.

FDA considers the development of opioid analgesics that can deter abuse and misuse to be a public health priority. Opioid analgesics can be abused orally or by injection, snorting, or smoking and also may be misused in therapeutic contexts. Products may be designed to deter one or more of these methods of abuse or misuse. Following mandates in the 2011 White House prescription drug abuse prevention plan (Ref. 5) and section 1122(c) of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (126 Stat. 1075), FDA recently issued a draft guidance to industry on the evaluation and labeling of potentially abuse-deterrent opioid analgesics (Ref. 6).

III. Assessment of Abuse-Deterrent Properties of Reformulated OxyContin

All forms of opioid analgesic abuse are dangerous, and non-oral routes of abuse are particularly dangerous. Intranasal and intravenous opioid abuse is associated with serious adverse events including addiction, overdose, and death (Refs. 7, 8, and 9). Intravenous opioid abuse is associated with HIV and hepatitis B and C infection risk (Ref. 10). Further, as stated in the OxyContin labeling (see section 9.2), injection of OxyContin excipients ''can result in death, local tissue necrosis, infection, pulmonary granulomas, and increased risk of endocarditis and valvular heart injury.'' The label is available at *http://www.accessdata.fda.gov/drugsatfda_docs/label/2013/022272s016lbl.pdf.* Intranasal opioid abuse is associated with nasal, palatal, and pharyngeal necrosis (Refs. 7 and 11).

Original OxyContin was often abused by manipulating the product to defeat its extended-release mechanism, causing the oxycodone to be released more rapidly. Original OxyContin also was manipulated for therapeutic purposes, for example, by crushing the product to sprinkle it onto food or to administer it through a gastric tube. As noted in the boxed warning of the labeling, disruption of the tablet and controlled-release mechanism for abuse or misuse ''can lead to rapid release and absorption of a potentially fatal dose of oxycodone.''

FDA has conducted an extensive review of data available to the Agency regarding reformulated OxyContin, including in vitro, pharmacokinetic, clinical abuse potential, and postmarketing study data. The data show that, when compared to original OxyContin, reformulated OxyContin has an increased ability to resist crushing, breaking, and dissolution using a variety of tools and solvents. The data also demonstrate that, when subjected to an aqueous environment, reformulated OxyContin gradually forms a viscous hydrogel. The data also indicate that insufflation of finely crushed reformulated OxyContin was associated with lower ''liking'' compared to finely crushed original OxyContin in recreational opioid users with a history of intranasal drug abuse. FDA concludes, based on these data and our review of all data and information available to the Agency at this time, that the physicochemical properties of reformulated OxyContin are expected to make abuse via injection difficult and are expected to reduce abuse via the intranasal route. In addition, reformulated OxyContin also may deter certain types of misuse in therapeutic contexts.

Additional postmarketing studies intended to assess the impact of reformulated OxyContin on abuse and misuse in the community also have been conducted; some of these are still ongoing. FDA has reviewed the available data from these studies and has concluded that they suggest, but do not confirm, a reduction in non-oral abuse. The Agency will continue to review data from these studies as they become available, as well as any other relevant data that may be developed in the future.

FDA has long considered the abuse potential of a drug in numerous regulatory contexts. Where appropriate, FDA may take into account abuse potential as part of the safety profile of a drug when weighing its benefits and risks. In this case, FDA has considered the abuse potential as part of the Agency's determination of whether the original formulation of OxyContin was withdrawn from sale for reasons of safety or effectiveness. This approach is particularly appropriate here in light of the extensive and well-documented history of OxyContin abuse.

Original OxyContin has the same therapeutic benefits as reformulated OxyContin. Original OxyContin, however, poses an increased potential for abuse by certain routes of administration, when compared to reformulated OxyContin. Based on the totality of the data and information available to the Agency at this time, FDA concludes that the benefits of original OxyContin no longer outweigh its risks. FDA has determined that OXYCONTIN (oxycodone hydrochloride) extended release tablets, 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg (approved under new drug application 20–553), were withdrawn from sale for reasons of safety or effectiveness. Accordingly, the

Agency will remove OXYCONTIN (oxycodone hydrochloride) extended-release tablets (10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg) approved under NDA 20–553 from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to these drug products.

IV. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site addresses in this reference section, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), ''Policy Impact: Prescription Painkiller Overdoses'' (*www.cdc.gov/HomeandRecreationalSafety/pdf/PolicyImpact-PrescriptionPainkillerOD.pdf*).
2. CDC, ''Vital Signs: Overdoses of Prescription Opioid Pain Relievers—United States, 1999–2008,'' *Morbidity and Mortality Weekly Report,* vol. 60, No. 43, pp. 1487–1492, 2011 (*www.cdc.gov/mmwr/pdf/wk/mm6043.pdf*).
3. National Center for Injury Prevention and Control, CDC, ''Unintentional Drug Poisoning in the United States'' (*www.cdc.gov/HomeandRecreationalSafety/pdf/poison-issue-brief.pdf*).
4. Jones, C.M., K.A. Mack, and L.J. Paulozzi, ''Pharmaceutical Overdose Deaths, United States, 2010,'' *Journal of the American Medical Association,* vol. 309, pp. 657–659, 2013.
5. FDA, ''FDA Blueprint for Prescriber Education for Extended-Release and Long-Acting Opioid Analgesics'' (*http://www.fda.gov/downloads/drugs/drugsafety/informationbydrugclass/ucm277916.pdf*).
6. FDA, ''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling,'' (*www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM334743.pdf*).
7. Katz, N., R.C. Dart, E. Bailey, et al., ''Tampering With Prescription Opioids: Nature and Extent of the Problem, Health Consequences, and Solutions,'' *The American Journal of Drug and Alcohol Abuse,* vol. 37, pp. 205–217, 2011.
8. Silva, K., S.M. Schrager, A. Kecojevic, et al., ''Factors Associated With History of Non-Fatal Overdose Among Young Nonmedical Users of Prescription Drugs,'' *Drug and Alcohol Dependence,* vol. 128, pp. 104–110, 2013.
9. Degenhardt, L., C. Bucello, B. Mathers, et al., ''Mortality Among Regular or Dependent Users of Heroin and Other Opioids: A Systematic Review and Meta-Analysis of Cohort Studies,'' *Addiction,* vol. 106, pp. 32–51, 2011.
10. CDC, ''Integrated Prevention Services for HIV Infection, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis for Persons Who Use Drugs Illicitly: Summary Guidance From the CDC and the U.S. Department of Health and Human Services,'' *Morbidity and Mortality Weekly Report,* vol. 61, pp. 1–40, 2012.
11. Alexander, D., K. Alexander, and J. Valentino, ''Intranasal Hydrocodone-Acetaminophen Abuse-Induced Necrosis of the Nasal Cavity and Pharynx,'' *The Laryngoscope,* vol. 122, pp. 2378–2381, 2012.

Dated: April 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–09092 Filed 4–16–13; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: April 22, 2013, 8:30 a.m.–5:00 p.m., April 23, 2013, 9:00 a.m.–5:00 p.m.

Place: Health Resources and Services Administration, U.S. Department of Health and Human Services, 5600 Fishers Lane, Rockville, Maryland 20852, Room 18–57.

Status: The meeting will be open to the public.

Purpose: The members of the ACICBL will begin discussions to develop the legislatively mandated 13th Annual Report to the Secretary of Health and Human Services and Congress. The Committee members will focus on the working topic: Optimizing the Interprofessional Team Member's Contributions to Population Health. The Committee has invited Dr. John Gilbert, former Principal and Professor Emeritus at the University of British Columbia, Canada; Ms. Rachel Watman, Senior Program Officer, The John A. Hartford Foundation; Dr. John Bulger, Chief Quality Officer, Geisinger Health System; Dr. Paul McGann, Deputy Chief Medical Officer for Innovation Grants, Centers for Medicare & Medicaid Services; Dr. Thomas Edes, Director of Home and Community-Based Care, U.S. Department of Veterans Affairs; and Dr. Alex Camacho, Deputy Director, Office of Performance Measurement, Health Resources and Services Administration. The meeting will afford committee members with the opportunity to identify and discuss population health; interprofessional education, care and competencies; and best practices and the like in an effort to formulate appropriate recommendations for the Secretary and the Congress.

Agenda: The ACICBL agenda includes an overview of the Committee's general business activities, presentations by and dialogue with experts, and discussion sessions specifically for the development of recommendations to be addressed in the 13th Annual ACICBL Report. The agenda will be available 2 days prior to the meeting on the HRSA Web site (*http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/acicbl.html*). Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: Members of the public and interested parties may request to provide comments or register to attend the meeting by emailing their first name, last name, and full email address to *BHPRAdvisoryCommittee@hrsa.gov* or by contacting Ms. Crystal Straughn at 301–443–3594. Registration is first come, first served as space is limited.

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Professions, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9C–05, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–6950; or (3) send an email to *jweiss@hrsa.gov*.

Dated: April 11, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–09135 Filed 4–17–13; 8:45 am]

BILLING CODE 4165–15–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: Parasites and Vectors.

Date: May 13–14, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting),

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA RM12–015: Pioneer Awards

Date: May 14–16, 2013

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: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–246: Translational Research in Pediatric and Obstetric Pharmacology.

Date: May 14, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call),

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: May 15, 2013.

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: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA RM 12–023: Diffusion of Medical Technology and Effects on Outcomes and Expenditures.

Date: May 15, 2013.

Time: 12:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 12, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–09074 Filed 4–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0012; OMB No. 1660–NEW]

Agency Information Collection Activities; Proposed Collection; Comment Request: Community Drill Day Registration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the online registration process for the FEMA Community Drill Day.

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2010–0012. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100, referencing Docket ID FEMA–2010–0012.

(3) *Facsimile.* Submit comments to (703) 483–2999 referencing Docket ID FEMA–2010–0012.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chad Stover, Individual and Community Preparedness Division Program Specialist, FEMA, 202–786–9860 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: As part of Presidential Policy Directive 8 (PPD–8): National Preparedness, the President tasked the Secretary of Homeland Security to ''coordinate a comprehensive campaign to build and sustain national preparedness, including public outreach and community-based and private-sector programs to enhance national resilience.'' FEMA intends to conduct one or more Community Drill Days, coordinated nationally by FEMA. Schools, businesses, faith-based organizations, governments at all levels, other community organizations, and families will participate in this Community Drill Day by voluntarily taking part in a simultaneous multi-hazard drill and public education effort.

In order to fulfill its mission, the Federal Emergency Management Agency Individual and Community Preparedness Division; will collect information from individuals and organizations through the Community Drill Day online registration.

FEMA's Individual and Community Preparedness Division would like to create a new online information collection process by which individuals and organizations submit information via a Web site. Registration provides an individual or organization links to educational information and activities about preparedness and response related to specific hazards. Registrants will receive important updates and messages from FEMA. This registry supports the mission of FEMA's Individual and Community Preparedness Division, to help achieve greater community resiliency nationwide.

Collection of Information

Title: Community Drill Day Registration.

OMB Control Number: 1660–NEW.

Type of Information Collection: New information collection.

FEMA Forms: FEMA Form 008–0–8, Community Drill Day.

Abstract: FEMA's Individual and Community Preparedness Division is requesting comments on a new information collection for its registration of individuals and organizations for the Community Drill Day. The registration process allows for individuals and organizations to submit information on their participation in Community Drill Day. The registration process will provide FEMA with valuable information about the public's participation in Community Drill Day that will inform future outreach strategies related to participation in Community Drill Day.

Affected Public: Individuals or households; Farms; Business or other for-profit; Federal Government; Not-for-profit institutions; State, local or Tribal Government.

Number of Respondents: 50,000.

Number of Responses: 50,000.

Estimated Total Annual Burden Hours: 15,000 hours.

TABLE A.1—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or Households; Farms; Business or other for-profit; Federal Government; Not-for-profit institutions; State, local or Tribal Government.	FEMA Form 008–0–8/Community Drill Day Registration.	50,000	1	50,000	.3 hour (18 mins.)	15,000	$21.74*	$326,100.00
Total		50,000		50,000		15,000		$326,100.00

* Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate. *http://www.bls.gov/news.release/ocwage.htm*

Estimated Cost: The estimated annual cost to respondents for the hour burden is $326,100.00. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $49,210.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: April 10, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–09077 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4104–DR; Docket ID FEMA–2013–0001]

Navajo Nation; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Navajo Nation (FEMA–4104–DR), dated March 5, 2013, and related determinations.

DATES: *Effective Date:* April 4, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Navajo Nation is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 5, 2013.

The Navajo Nation and associated lands for buildings and equipment (Category E) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09071 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4107–DR; Docket ID FEMA–2013–0001]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4107–DR), dated March 22, 2013, and related determinations.

DATES: *Effective Date:* March 22, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 22, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in the State of Rhode Island resulting from a severe winter storm and snowstorm during the period of February 8–9, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Rhode Island have been designated as adversely affected by this major disaster:

Bristol, Kent, Newport, Providence, and Washington Counties for Public Assistance.

Kent, Providence, and Washington Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Rhode Island are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09080 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4108–DR; Docket ID FEMA–2013–0001]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–4108–DR), dated March 25, 2013, and related determinations.

DATES: *Effective Date:* March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Maine resulting from a severe winter storm, snowstorm, and flooding during the period of February 8–9, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Androscoggin, Cumberland, Knox, and York Counties for Public Assistance.

Androscoggin, Cumberland, and York Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

Knox County for snow assistance under the Public Assistance program for any continuous 72-hour period during or proximate to the incident period.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09083 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4106–DR; Docket ID FEMA–2013–0001]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4106–DR), dated March 21, 2013, and related determinations.

DATES: *Effective Date:* March 21, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 21, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in the State of Connecticut resulting from a severe winter storm and snowstorm during the period of February 8–11, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance, including direct federal assistance, in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham Counties and the Mashantucket Pequot and Mohegan Tribal Nations located within New London County for Public Assistance. Direct federal assistance is authorized.

Fairfield, Litchfield, Middlesex, New London, Tolland, and Windham Counties and the Mashantucket Pequot and Mohegan Tribal Nations located within New London County for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

Hartford and New Haven Counties for snow assistance under the Public Assistance program for any continuous 72-hour period during or proximate to the incident period.

All counties and Indian Tribes within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09078 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4105–DR; Docket ID FEMA–2013–0001]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of State of New Hampshire (FEMA–4105–DR), dated March 19, 2013, and related determinations.

DATES: *Effective Date:* March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 19, 2013, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe winter storm and snowstorm during the period of February 8–10, 2013, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance, including direct federal assistance, in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Belknap, Carroll, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for Public Assistance program. Direct federal assistance is authorized.

Belknap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

Carroll County for snow assistance under the Public Assistance program for any continuous 72-hour period during or proximate to the incident period.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–09076 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: United States-Caribbean Basin Trade Partnership Act (CBTPA)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0083.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act (CBTPA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before June 17, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: CBP Form 450.

Abstract: The provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA) were adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L. 106–200). The objective of the CBTPA is to expand trade benefits to countries in the Caribbean Basin. For preferential duty treatment under CBTPA, importers are required to have a CBTPA Certification of Origin (CBP Form 450) in their possession at the time of the claim, and to provide it to CBP upon request. CBP Form 450 collects data such as contact information for the exporter, importer and producer, and information about the goods being claimed.

This collection of information is provided for by 19 CFR 10.224. CBP Form 450 is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_450.pdf*

Current Actions: This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of Form 450's that are prepared and/or submitted to CBP. There are no changes CBP Form 450 or to the data collected on this form.

Type of Review: Extension with a change to the burden hours.

Affected Public: Businesses.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 286.13.

Estimated Total Annual Responses: 4,292.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,073.

Estimated Total Annual Burden Hours: 472,203.

Dated: April 15, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–09128 Filed 4–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5686–N–01]

Notice of Proposed Information Collection; Comment Request: Ginnie Mae Multiclass Securities Program Documents (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 17, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Q, Administrator Support Specialist, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410; email: *Colette.Pollard@hud.gov;* telephone (202) 708–0306, ext. 3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

FOR FURTHER INFORMATION CONTACT: Debra Murphy or Victoria Vargas, Ginnie Mae, 451 7th Street SW., Room B–133, Washington, DC 20410; emails—*Debra.L.Murphy@hud.gov;* telephone (202) 475–4923 or *Victoria_Vargas@hud.gov;* telephone—(202) 475–6752. These are not toll-free numbers); the Ginnie Mae Web site at *www.ginniemae.gov* for other available information.

SUPPLEMENTARY INFORMATION: HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and 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: Ginnie Mae Multiclass Securities Program Documents. (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0030.

Description of the need for the information and proposed use: This information collection is required in connection with the operation of the Ginnie Mae Multiclass Securities Program. Ginnie Mae's authority to guarantee multiclass instruments is contained in 306(g)(1) of the National Housing Act (''NHA'') (12 U.S.C. 1721(g)(1)), which authorizes Ginnie Mae to guarantee ''securities * * * based on or backed by a trust or pool composed of mortgages. * * *'' Multiclass securities are backed by Ginnie Mae securities, which are backed by government insured or guaranteed mortgages. Ginnie Mae's authority to operate a Multiclass Securities Program is recognized in Section 3004 of the Omnibus Budget Reconciliation Act of 1993 (''OBRA''), which amended 306(g)(3) of the NHA (12 U.S.C. 1271(g)(3)) to provide Ginnie Mae with greater flexibility for the Multiclass Securities Program regarding fee structure, contracting, industry consultation, and program implementation. Congress annually sets Ginnie Mae's commitment authority to guarantee mortgage-backed securities (''MBS'') pursuant to 306(G)(2) of the NHA (12 U.S.C. 1271(g)(2)). Since the multiclass are backed by Ginnie Mae Single Class MBS, Ginnie Mae has already guaranteed the collateral for the multiclass instruments.

The Ginnie Mae Multiclass Securities Program consists of Ginnie Mae Real Estate Mortgage Investment Conduit (''REMIC'') securities, Stripped Mortgage-Backed Securities (''SMBS''), and Platinum securities. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae Single Class MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The intent of the Multiclass Securities Program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC, SMBS and Platinum securities.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondent	Total annual responses	Est. average hrly burden	Est. annual burden hrs
REMIC Securities:						
OID/Prices Letter	Sponsor	15	8	120	0.5	60
Final Structure Sheet	Sponsor	15	8	120	3	360
Trust (REMIC) Agreement	Attorney for Sponsor	15	8	120	1	120
Trust Opinion	Attorney for Sponsor	15	8	120	4	480
MX Trust Agreement	Attorney for Sponsor	15	8	120	0.16	19.2
MX Trust Opinion	Attorney for Sponsor	15	8	120	4	480
RR Certificate	Attorney for Sponsor	15	8	120	0.08	9.6
Sponsor Agreement	Attorney for Sponsor	15	8	120	0.05	6
Table of Contents	Attorney for Sponsor	15	8	120	0.33	39.6
Issuance Statement	Attorney for Sponsor	15	8	120	0.5	60

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondent	Total annual responses	Est. average hrly burden	Est. annual burden hrs
Tax Opinion	Attorney for Sponsor	15	8	120	4	480
Transfer Affidavit	Attorney for Sponsor	15	8	120	0.08	9.6
Supplemental Statement	Attorney for Sponsor	15	0.25	3.75	1	3.75
Final Data Statements (attached to closing letter).	Accountant for Sponsor	15	8	120	32	3840
Accountants' Closing Letter	Accountant	15	8	120	8	960
Accountants' OCS Letter	Accountant	15	8	120	8	960
Structuring Data	Accountant	15	8	120	8	960
Financial Statements	Accountant	15	8	120	1	120
Principal and Interest Factor File Specifications.	Trustee	15	8	120	16	1920
Distribution Dates and Statement.	Trustee	15	8	120	0.42	50.4
Term Sheet	Accountant for Sponsor	15	8	120	2	240
New Issue File Layout	Trustee	15	8	120	4	480
Flow of Funds	Attorney for Sponsor	15	8	120	0.16	19.2
Trustee Receipt	Attorney for Sponsor	15	8	120	2	240
Subtotal				2763.75		11917.35
SMBS Securities:						
OID/Prices Letter	Sponsor	10	1	10	0.5	5
Final Structure Sheet	Sponsor	10	1	10	3	30
Trust (REMIC) Agreement	Attorney for Sponsor	10	1	10	1	10
Trust Opinion	Attorney for Sponsor	10	1	10	4	40
MX Trust Agreement	Attorney for Sponsor	10	1	10	0.16	1.6
MX Trust Opinion	Attorney for Sponsor	10	1	10	4	40
RR Certificate	Attorney for Sponsor	10	1	10	0.08	0.8
Sponsor Agreement	Attorney for Sponsor	10	1	10	0.05	0.5
Table of Contents	Attorney for Sponsor	10	1	10	0.33	3.3
Issuance Statement	Attorney for Sponsor	10	1	10	0.5	5
Tax Opinion	Attorney for Sponsor	10	1	10	4	40
Transfer Affidavit	Attorney for Sponsor	10	1	10	0.08	0.8
Supplemental Statement	Attorney for Sponsor	10	0.25	2.5	1	2.5
Final Data Statements (attached to closing letter).	Accountant for Sponsor	10	1	10	32	320
Accountants' Closing Letter	Accountant	10	1	10	8	80
Accountants' OCS Letter	Accountant	10	1	10	8	80
Structuring Data	Accountant	10	1	10	8	80
Financial Statements	Accountant	10	1	10	1	10
Principal and Interest Factor File Specifications.	Trustee	10	1	10	16	160
Distribution Dates and Statement.	Trustee	10	1	10	0.42	4.2
Term Sheet	Sponsor	10	1	10	2	20
New Issue File Layout	Trustee	10	1	10	4	40
Flow of Funds	Attorney for Sponsor	10	1	10	0.16	1.6
Trustee Receipt	Attorney for Sponsor	10	1	10	2	20
Subtotal				232.5		995.3
Platinum Securities:						
Deposit Agreement	Depositor	19	10	190	1	190
MBS Schedule	Depositor	19	10	190	0.16	30.4
New Issue File Layout	Depositor	19	10	190	4	760
Principal and Interest Factor File Specifications.	Trustee	19	10	190	16	3040
Subtotal				760		4020.4
Total Annual Responses.				3756.25		
Total Burden Hours						16933.05

Calculation of Burden Hours

Sponsors × Frequency per Year = Estimated Annual Frequency.

Estimated Annual Frequency × Estimated Average Completion Time = Estimated Annual Burden Hours.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 as amended.

Dated: April 10, 2013.

Mary K. Kinney,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 2013–09132 Filed 4–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DLCAP000.000000–DX.10120]

Request for Nominations To Serve on Board of Trustees for the Cobell Education Scholarship Fund

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of reopening; request for nominations.

SUMMARY: Pursuant to the Claims Resolution Act of 2010, Public Law 111–291, 124 Stat. 3064, and the Class Action Settlement Agreement (''Agreement''), *Cobell* v. *Salazar,* the Secretary of the Interior is reopening the request for nominations of candidates to serve on the Board of Trustees (''Board'') for the Cobell Education Scholarship Fund. The Board serves as an oversight body to the American Indian College Fund and must consist of no more than five members that will include two representatives selected by the Secretary and two representatives selected by the Plaintiff, and one representative selected by the non-profit organization. The Secretary will consider nominations received within 30 days after the publication of this notice. The **SUPPLEMENTARY INFORMATION** section of this notice provides additional information.

DATES: Nominations must be received on or before May 20, 2013. Assistant Secretary—Indian Affairs Kevin K. Washburn will be hosting a tribal leader call on Monday, April 22, 2013 from 3:00 p.m.–4:00 p.m. to discuss the duties and responsibilities of Board members as well as any questions you may have regarding nominations to the Board. To participate on the call, please dial 1–800–369–2020, passcode 5207626.

ADDRESSES: Please submit nominations to Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240 or email to *lizzie_marsters@ios.doi.gov*.

FOR FURTHER INFORMATION CONTACT: Lizzie Marsters, Chief of Staff to the Deputy Secretary, at *lizzie_marsters@ios.doi.gov* or call 202–219–7499.

SUPPLEMENTARY INFORMATION: The Board of Trustees for the Cobell Education Scholarship Fund is being established to fulfill the requirements set forth in the Claims Resolution Act of 2010, Public Law 111–291, 124 Stat. 3064. Specifically, the Claims Resolution Act of 2010 states ''the 2 members of the special board of trustees to be selected by the Secretary under paragraph G.3. of the Settlement shall be selected only after consultation with, and after considering the names of possible candidates timely offered by, federally recognized Indian tribes.'' Pursuant to the Agreement, the Secretary is to select one non-profit organization among those entities nominated by the Plaintiffs to administer the funds provided for in the Agreement for the Cobell Education Scholarship Fund and to establish a Scholarship Program to provide financial assistance to Native American students to defray the cost of attendance at both post-secondary vocational schools and institutions of higher education. On March 12, 2013, the Secretary of the Interior announced the American Indian College Fund as the non-profit organization. The Board of Trustees shall oversee the management of the Cobell Education Scholarship Fund. The Cobell Education Scholarship Fund was created as an incentive to participate in the Land Buy-Back Program for Indian Nations (Buy-Back Program), the $1.9 billion land consolidation program authorized by the Claims Resolution Act of 2010. The Buy-Back Program contributes up to $60 million of the $1.9 billion to the Cobell Education Scholarship Fund based on the dollar amount of land purchased through the Buy-Back Program. In addition to the maximum $60 million that can be contributed to the Fund, the principal amount of any class member funds in an IIM (Individual Indian Monies) account, for which the whereabouts are unknown and left unclaimed for five years after Final Approval of the Settlement, will be transferred to the organization selected to administer the Cobell Education Scholarship Fund and will be governed by the Board of Trustees. Similarly, any leftover funds from the administration of the Settlement Fund (after all payments under the Settlement are made) will be contributed towards the Cobell Education Scholarship Fund. Assistant Secretary—Indian Affairs Kevin K. Washburn will be hosting a tribal leader call on Monday, April 22, 2013 from 3:00 p.m.–4:00 p.m. to discuss the duties and responsibilities of Board members as well as any questions you may have regarding nominations to the Board. To participate on the call, please dial 1–800–369–2020, passcode 5207626.

Objective and Duties. The Board will be responsible for the oversight and supervision of the activities of the non-profit organization. The duties of the Board include, but are not limited to, appointing an auditor to review the finances and procedures of the organization, approving policies and objectives regarding the Cobell Education Scholarship Fund and Scholarship program, approving an investment policy and approving priorities and criteria for awarding scholarships. The Board shall develop and adopt a charter outlining the Board of Trustees' role and responsibilities overseeing the non-profit organization and the administration and management of the Cobell Education Scholarship Fund and the Scholarship Program. The Board or Trustees shall be empowered by majority vote to remove the funds from the selected organization for any reason, including mismanagement, and to select a new entity.

Membership. The members of the Board shall serve for an initial term of four years and may be reappointed for an unlimited number of successive terms. A member may be removed for cause by the appointing entity and any vacancy shall be filled in the same manner as the original appointment. No member of the Board shall have had any contracts to transact business with the non-profit organization within a period of two calendar years and will disclose any appearance of a conflict of interest. Members will serve without compensation, but will be reimbursed for reasonable travel expenses related to the performance of their duties as members of the Board.

Nomination Information. The best boards are a mix of characteristics, skills, experiences, and diversity. Individuals who are nominated should be prepared to contribute a significant amount of time and effort to further the goals of the scholarship fund; should have demonstrated notable or significant achievements in business, finance, education or public service; should possess the requisite intelligence, education and experience to make a significant contribution to the Board; have the highest ethical standards, free of significant conflicts of interest that might not allow the proper execution of the duties of a member of the Board; and have a strong commitment to serving the interests of Native American students. Please send curriculum vitae, a letter of intent which indicates a willingness to serve, and a 250-word statement which supports your candidacy to Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240 or email to *lizzie_marsters@ios.doi.gov*.

Dated: April 15, 2013.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2013–09145 Filed 4–15–13; 4:15 pm]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2012–0019; FF07CAMM00–FXFR13370700000M7]

Marine Mammal Protection Act; Draft Revised Stock Assessment Reports for the Pacific Walrus and Three Northern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), have developed a draft revised marine mammal stock assessment report (SAR) for the Pacific walrus stock and for each of the following three northern sea otter stocks in Alaska: Southwest, Southcentral, and Southeast. We now make the SARs available for public review and comment.

DATES: Comments must be received by July 17, 2013.

ADDRESSES: *Document Availability:* You may view the draft revised stock assessment reports on *http://www.regulations.gov* under Docket No. FWS–R7–ES–2012–0019. You may also view them in Adobe Acrobat format by navigating to the species information page at *http://alaska.fws.gov/fisheries/mmm/reports.htm.* Alternatively, you may contact the Chief, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503; telephone: 907–786–3800.

Written Comments: You may submit comments on the draft revised stock assessment reports by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2012–0019; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203; or
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2012–0019.

Please indicate to which revised stock assessment report(s)—the Pacific walrus, or the southeast, southcentral, or southwest Alaska northern sea otter stock—your comments apply. We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Charles S. Hamilton, Marine Mammals Management Office, 800–362–5148 (telephone). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We announce for review and comment the availability of draft revised marine mammal stock assessment reports (SAR) for the Pacific walrus (*Odobenus rosmarus divergens*) stock and for each of the following three northern sea otter (*Enhydra lutris kenyoni*) stocks in Alaska: Southwest, Southcentral, and Southeast.

Under the MMPA (16 U.S.C. 1361 et seq.) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we regulate the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the goals of the MMPA is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). OSP is defined under the MMPA as ''* * * the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(3)(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the Service and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. Each SAR must include:

1. A description of the stock and its geographic range;
2. A minimum population estimate, maximum net productivity rate, and current population trend;
3. An estimate of human-caused mortality and serious injury;
4. A description of commercial fishery interactions;
5. A categorization of the status of the stock; and
6. An estimate of the potential biological removal (PBR) level.

The MMPA defines the PBR as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP'' (16 U.S.C. 1362(3)(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0. This can be written as:

$$PBR = (N_{min})(\tfrac{1}{2} \text{ of the } R_{max})(F_r)$$

Section 117 of the MMPA requires the Service and NMFS to review the SARs (a) At least annually for stocks that are specified as strategic stocks, (b) at least annually for stocks for which significant new information is available, and (c) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A *strategic stock* is defined in the MMPA as a marine mammal stock ''(a) for which the level of direct human-caused mortality exceeds the PBR level; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) [the ''ESA''], within the foreseeable future; or (c) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under [the MMPA].'' 16 U.S.C. 1362(3)(19).

The Pacific walrus SAR was last revised in December of 2009. In the final 2009 revised stock assessment, we classified the Pacific walrus as a strategic stock because the total human-caused mortality or removals exceeded PBR. Therefore, the Service has reviewed the stock assessment for the Pacific walrus annually and, in 2010, concluded that revision of the SAR was not warranted at that time because the status of the stock had not changed significantly, nor could it be more accurately determined. SARs for the Southwest, Southcentral, and Southeast stocks of northern sea otters were last revised in August of 2008. The Southwest stock of northern sea otter qualifies as a strategic stock due to its listing as a threatened species under the ESA; therefore, the Service has reviewed the SAR for the Southwest stock annually in 2009 and 2010 and concluded both times that revision of the SAR was not warranted because the status of the stock had not changed, nor could it be more accurately determined. The Southcentral and Southeast stocks of northern sea otter are considered non-strategic, and the Service also reviewed these SARs annually in 2009 and 2010 due to the availability of significant new information. During both these reviews, the Service determined that revision of the SARs for the Southcentral and Southeast stocks of northern sea otter was not warranted. However, upon review in 2011, the Service determined that revision was warranted for the Pacific walrus stock, as well as the Southwest, the Southcentral, and the Southeast northern sea otter stocks; the Service has consulted with the Alaska Regional Scientific Review Group concerning these revisions.

The following table summarizes the information we are now making available in the draft revised stock assessment reports for the Pacific walrus and the southwest, southcentral and southeast stocks of the northern sea otter, which lists the stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status. After consideration of any public comments we receive, the Service will revise and finalize the SARs as appropriate for these stocks. We will publish a notice of availability and summary of the final SARs, including responses to submitted comments.

SUMMARY: DRAFT REVISED STOCK ASSESSMENT REPORTS FOR THE PACIFIC WALRUS, AND SOUTHWEST, SOUTHCENTRAL, AND SOUTHEAST STOCKS OF THE NORTHERN SEA OTTER

Stock	N_{min}	R_{max}	F_r	PBR	Annual estimated human-caused mortality and serious injury (5-year average)		Stock status
					Fishery/ other	Subsistence	
Pacific Walrus	129,000	0.08	0.5	2,580	12	4,852	Strategic.
Northern Sea Otter, Southwest Stock	45,064	0.20	0.1	450	<10	76	Strategic.
Northern Sea Otter, Southcentral Stock.	14,661	0.20	1.0	1,466	1	293	Non-Strategic.
Northern Sea Otter, Southeast Stock	21,798	0.20	1.0	2,179	Unknown	447	Non-Strategic.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

References

In accordance with section 117(b)(1) of the MMPA, we include in this notice a list of the sources of information or published reports upon which we based the draft revised SAR. The Service consulted technical reports, conference proceedings, refereed journal publications, and scientific studies prepared or issued by Federal agencies, nongovernmental organizations, and individuals with expertise in the fields of marine mammal biology and ecology, population dynamics, Alaska Native subsistence use of marine mammals, modeling, and commercial fishing technology and practices.

These agencies and organizations include: the Service, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, the National Park Service, the Arctic Institute, the North American Wildlife and Natural Resource Conference, the Marine Mammals of the Holarctic V Conference, the Aleutian Islands Risk Assessment Management Team, the *Exxon Valdez* Restoration Project, and the Outer Continental Shelf Environmental Assessment Program. In addition, the Service consulted publications such as the Journal of Wildlife Management, Conservation Biology, Marine Mammal Science, Ecological Applications, Biological Conservation, Aquatic Mammals, and Journal of Zoology, as well as other refereed journal literature, technical reports, and data sources in the development of these SARs.

A complete list of citations to the scientific literature relied on for each of the four draft revised SARs is available on the Federal eRulemaking portal (*http://www.regulations.gov*) under Docket No. FWS–R7–ES–2012–0019. The list can also be viewed in Adobe Acrobat format at *http://alaska.fws.gov/fisheries/mmm/reports.htm.*

In the past, the Service has published a complete list of citations to each technical report, scientific paper, and journal publication upon which the draft revised SAR is based at the end of the Notice of Availability. However, in order for the public to more easily understand how the agency has used and interpreted the sources relied upon in the draft revised SARs, the Service is making the complete list of literature citations available at the end of each of the draft revised SARs. In recognition that the public typically reviews our draft SARs, or any revision thereof, in conjunction with the list of supporting literature citations found at the end of draft SARs, the Service believes it is unnecessary to also publish the complete list of references separately in this notice of availability. Instead, we are including the complete list of references in the draft revised SARs as a single document available to the public through the Government's regulations portal and our own Web page.

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et al.).

Dated: April 9, 2013.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2013–09067 Filed 4–17–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N091; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before May 20, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by May 20, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *managementauthority@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *managementauthority@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Suzanne Crow, Camilla, GA; PRT–01602B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) and Galapagos tortoise (*Chelonoidis nigra*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Collins Red Stag Ranch Ltd., Centerville, TX; PRT–99899A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Nanger dama*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Collins Red Stag Ranch Ltd., Centerville, TX; PRT–99898A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Audubon Zoological Garden, New Orleans, LA; PRT–680602

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Cebidae
Canidae
Cercopithecidae
Cervidae
Equidae
Felidae (does not include jaguar, ocelot or margay)
Lemuridae
Mustelidae (does not include sea otter)
Rhinocerotidae
Suidae
Tapiridae
Ursidae
Columbidae

Psittacidae
Boidae (does not include Puerto Rico or Mona boa)
Testudinidae
Varanidae

Species

Elephas maximus

Applicant: Man Lui, Pleasanton, CA; PRT–00639B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Tulsa Zoo, Tulsa, OK; PRT–668691

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Cercopithecidae
Felidae (*does not* include jaguar, margay or ocelot)
Hylobatidae
Hominidae
Lemuridae
Tapiridae
Iguanidae

Species

Golden-headed lion tamarin (*Leontopithecus chrysomela*)
African wild dog (*Lycaon pictus*)
Rothschild's starling (*Leucopsar rothschildi*)
Radiated tortoise (*Geochelone radiata*)
South American river turtle (*Podocnemis expansa*)
Komodo monitor (*Varanus komodoensis*)
Asian bonytongue (*Scleropages formosus*)
Aquatic box turtle (*Terrapene coahuila*)
Siberian crane (*Grus leucogeranus*)

Applicant: Lars Petersen, Lodi, WI; PRT–030672

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the golden parakeet (*Aratinga Guarouba*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Griffith Bros. Whitetail Ridge Inc., Huntingdon, PA; PRT–01540B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: The Austin Savannah, Creedmoor, TX; PRT–10982A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include the following black rhinoceros (*Diceros bicornis*) and Indian rhinoceros (*Rhinoceros unicornis*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoo Miami, Miami, FL; PRT–681592

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families

Bovidae
Equidae
Felidae (*does not* include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Rhinocerotidae
Tapiridae
Gruidae
Psittacidae (*does not* include thick-billed parrot)
Crocodylidae (*does not* include American crocodile or American alligator)
Testudinidae

Species

Asian elephant (*Elephas maximus*)
Koala (*Phascolarctos cinereus*)
African wild dog (*Lycaon pictus*)
Andean condor (*Vultur gryphus*)
Harpy eagle (*Harpia harpyja*)
Komodo Island monitor (*Varanus komodoensis*)

Applicant: Columbian Park Zoo, Lafayette, IN; PRT–692213

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the ring-tailed lemur (*Lemur catta*), black & white ruffed lemur (*Varecia variegata variegata*), red-ruffed lemur (*Varecia variegata ruber*), white-handed gibbon (*Hylobates lar*) and Galapagos tortoise (*Chelonoidis nigra)* to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lake Superior Zoo, Duluth, MN; PRT–03672A

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Amur tiger (*Panthera tigris altaica*), cotton-top tamarin (*Saguinus oedipus*) and red ruffed lemur (*Varecia rubra*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wade Harrell, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Southwest Region, Austwell, TX; PRT–022747

The applicant requests renewal of a permit to export/re-export captive-bred/captive hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples and salvaged materials from captive-bred/wild specimens of whooping cranes (*Grus americana*) to Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvaged materials may include, but are not limited to, whole or partial specimens, feathers, eggs, and egg shell fragments. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: White Oak Conservation Holdings LLC, Yulee, FL; PRT–03134B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the cheetah *(Acinonyx jubatus),* maned wolf *(Chrysocyon brachyurus),* banteng *(Bos javanicus),* Dama gazelle *(Nanger dama),* Somali wild ass *(Equus africanus somalicus),* Grevy's zebra *(Equus grevyi),* black rhinoceros *(Diceros bicornis),* Indian rhinoceros *(Rhinoceros unicornis),* and Komodo monitor *(Varanus komodoensis)* to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Terence Fitzgerald, Naples, FL; PRT–03133B

Applicant: Peter Wirtz, West Des Moines, IA; PRT–03105B

B. Endangered Marine Mammals

Applicant: Florida Fish and Wildlife Conservation Commission, St. Petersburg, FL; PRT–773494

The applicant requests a permit to take West Indian manatees (*Trichechus manatus*) of all ages and sexes from the wild in the southeastern United States for the purpose of scientific research. In addition, they would like authorization to import and export biological specimens of all Sirenia species. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–09121 Filed 4–17–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.CD00.B9510.00]

Proposed Information Collection: State Water Resources Research Institute Program; Annual Application and Reporting

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0097); request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection (IC) to renew approval of the paperwork requirements for ''National Institutes for Water Resources (NIWR) USGS Competitive Grant Program.'' This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this form. This collection is scheduled to expire on July 31, 2013.

DATES: You must submit comments on or before June 17, 2013.

ADDRESSES: Send your comments to the IC to David Govoni, Information Collections Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *dgovoni@usgs.gov* (email). Please reference Information Collection 1028–0097.

FOR FURTHER INFORMATION CONTACT: Earl Greene, Acting Chief, Office of External Research, U.S. Geological Survey, 5522 Research Park Drive, Baltimore, MD 21228, email: *eagreene@usgs.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 et seq.), authorizes a research institute water resources or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Marina Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. Each of the 54 institutes submits an annual application for an allotment grant and provides an annual report on its activities under the grant. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The program also encourages regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character. The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

II. Data

OMB Control Number: 1028–0097.

Title: State Water Resources Research Institute Program Annual Application and Reporting.

Type of Request: Extension of a currently approved collection.

Affected Public: The state water resources research institutes authorized by the Water Resources Research Act of 1983, as amended, and listed at *http://water.usgs.gov/wrri/institutes.html*.

Respondent's Obligation: Mandatory (necessary to obtain benefits).

Frequency of Collection: Annually.

Estimated Number of Annual Respondents: We expect to receive 54 applications and award 54 grants per year.

Estimated Annual total Responses: 54.

Estimated Time per Response: 160 hours. This includes 80 hours per applicant to prepare and submit the annual application; and 80 hours (total) per grantee to complete the annual reports.

Annual Burden Hours: 8,640.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 it will be done.

Dated: April 8, 2013.

Earl A. Greene,

Acting Water Resources Research Act Program Coordinator.

[FR Doc. 2013–09088 Filed 4–17–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Account Code GX13000101000]

Public Review of Draft National Shoreline Data Content Standard

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice; request for comments on draft National Shoreline Data Content Standard.

SUMMARY: The Federal Geographic Data Committee (FGDC) is conducting a public review of the draft National Shoreline Data Content Standard.

The FGDC has developed a draft National Shoreline Data Content Standard that provides a framework for shoreline data development, sharing of data, and shoreline data transformation and fusion. The FGDC Coastal and Marine Spatial Data Subcommittee, chaired by the National Oceanic and Atmospheric Administration (NOAA), sponsored development of the draft standard. The FGDC Coordination Group, comprised of representatives of Federal agencies, has approved releasing this draft standard for public review and comment.

The draft National Shoreline Data Content Standard defines attributes or elements that are common for shoreline data development and provides suggested domains for the elements. The functional scope includes definition of data models, schemas, entities, relationships, definitions, and crosswalks to related standards. The draft National Shoreline Data Content Standard is intended to enhance the shoreline framework by providing technical guidance on shoreline semantics, data structures and their relationships to builders and users of shoreline data. The geographical scope of the draft standard comprises all shorelines of navigable waters within the United States and its territories.

The primary intended users of the National Shoreline Data Content Standard are the mapping, shoreline engineering, coastal zone management, flood insurance, and natural resource management communities. The FGDC invites all stakeholders to comment on this draft standard to ensure that it meets their needs.

The draft National Shoreline Data Content Standard may be downloaded from *https://www.fgdc.gov/standards/projects/FGDC-standards-projects/shoreline-data-content/revisedDraftNationalShorelineDataContentStandard.* Comments shall be submitted using the content template at *http://www.fgdc.gov/standards/process/standards-directives/template.doc.* Instructions for completing the comment template are found in FGDC Standards Directive #2d, Standards Working Group Review Guidelines: Review Comment Template, *http://www.fgdc.gov/standards/process/standards-directives/directive-2d-standards-working-group-review-guidelines-review-comment-template.*

Comments that concern specific issues/changes/additions may result in revisions to the National Shoreline Data Content Standard. Reviewers may obtain information about how comments were addressed upon request. After formal endorsement of the standard by the FGDC, the National Shoreline Data Content Standard and a summary analysis of the changes will be made available to the public on the FGDC Web site, *www.fgdc.gov.*

DATES: Comments on the draft Coastal and Marine Ecological Classification Standard must be submitted by no later than July 31, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Binder Maitra, U.S. Geological Survey, Federal Geographic Data Committee, *jmaitra@fgdc.gov*, 703–648–4627.

SUPPLEMENTARY INFORMATION: The location of our national shoreline is fundamental for legal boundaries, developing nautical charts, and engaging in marine planning and other academic research and commercial activities. Shoreline is a commonly referenced feature, but one that includes multiple definitions and is difficult to precisely map and keep up-to-date. Effective use of shoreline data requires a highly defined logical data structure that is interoperable, efficient and applicable to a broad base of government and private sector uses. Current practices have led to a highly variable shoreline data infrastructure. The National Shoreline Data Content Standard is intended to enhance the shoreline framework by providing technical guidance on shoreline semantics, data structures and their relationships to builders and users of shoreline data.

Shoreline definition protocols currently limit agencies and organizations from effectively sharing and using shoreline coincident data. Agencies have expressed an interest for greater harmonization and uniformity to shoreline data content. Enhancing shoreline content and interoperability is technically feasible and timely in relation to hydrographic, hydrologic and other related standards development. The proposed standard will tie related protocols and existing content together in a new model using recognized reference material, definitions, semantics, and structures. Harmonizing shoreline content will lead to cost savings by reducing the time in design, data re-use, training, and implementation. In addition, harmonizing shoreline data content will assist in areas such as coastal research, historical shoreline change analysis, shoreline change prediction analysis, and the effects of relative sea level change. The National Shoreline Data Content Standard provides a framework for shoreline data development, sharing of data, and shoreline data transformation and fusion. The standard defines attributes or elements that are common for shoreline data development and provides suggested domains for the elements.

The geographical scope of the National Shoreline Data Content Standard comprises all shorelines of navigable waters within the United States and its territories. Navigable waters provide a channel for commerce and transportation of people and goods and as such are under the jurisdiction of the Federal Government.

The functional scope of the standard includes the definition of data models, schemas, entities, relationships, definitions, and crosswalks to related standards. Data discovery, transmittal, display, and delivery are not currently part of this standard.

The primary intended users of this standard are the mapping, shoreline engineering, coastal zone management, flood insurance, and natural resource management communities. The standard is intended to support the shoreline community in developing shoreline data to support data transformation, data fusion, and data sharing.

The FGDC coordinates the development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. The authority for the FGDC is OMB Circular No. A–16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at *http://www.fgdc.gov.* Standards are a foundational component of the NSDI.

Dated: April 8, 2013.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2013–09089 Filed 4–17–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B813.IA001113]

Renewal of Agency Information Collection for Energy Resource Development Program Grants

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for grants under the Office of Indian Energy and Economic Development, Energy and Mineral Development Program, authorized by OMB Control Number 1076–0174. This information collection expires April 30, 2013.

DATES: Interested persons are invited to submit comments on or before May 20, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov*. Please send a copy of your comments to Division of Energy and Mineral Development, Dawn Charging, Senior Policy Analyst, 13922 Denver West Parkway, Suite 200, Lakewood, CO 80401. Email: *dawn.charging@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Division of Energy and Mineral Development, Dawn Charging, Senior Policy Analyst, 13922 Denver West Parkway, Suite 200, Lakewood, CO 80401. Email: *dawn.charging@bia.gov*, or phone: 720–407–0652. You may review the information collection request online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005, 25 U.S.C. 3502(a)(2)(B) authorizes the Secretary of the Interior to provide grants to assist Indian tribes in the development of energy resources and further the goal of Indian self-determination.

The Office of Indian Energy and Economic Development (IEED) administers and manages the energy resource development grant program under the Energy and Minerals Development Program (EMDP). Congress may appropriate funds to EMDP on a year-to-year basis. When funding is available, IEED may solicit proposals for energy resource development projects from Indian tribes and tribal energy resource development organizations for use in carrying out projects to promote the integration of energy resources, and to process, use or develop those energy resources on Indian land. The projects may be in the areas of exploration, assessment, development, feasibility, or market studies. Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information, and must assist IEED by providing information in support of any National Environmental Policy Act (NEPA) analyses.

II. Request for Comments

The Bureau of Indian Affairs (BIA) requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0174.

Title: Energy and Mineral Development Program Grants.

Brief Description of Collection: Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information. A complete application must contain a current, signed tribal resolution that provides sufficient information to authorize the project and comply with the terms of the grant; a proposal describing the planned activities and deliverable products; and a detailed budget estimate. The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the EMDP and purposes for which Congress provides the appropriation. Upon acceptance of an application, a tribe must then submit one—to two—page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project. A response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian tribes with Indian land.

Number of Respondents: 75 applicants per year; 30 project participants each year.

Frequency of Response: Once per year for applications; 4 times per year for progress reports.

Estimated Time per Response: 40 hours per application; 1.5 hours per progress report.

Estimated Total Annual Hour Burden: 3,180 hours (3000 for applications and 180 for progress reports).

Estimated Total Annual Non-Hour Burden: $0.

Dated: April 12, 2013.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–09164 Filed 4–17–13; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT980300–L11200000–PH0000–24–1A]

Notice of Utah's Resource Advisory Council Conference Call Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conference Call Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will host a conference call meeting.

DATES: The Utah RAC will host a conference call meeting Thursday, May 16, 2013, from 10:00 a.m.–noon, MST.

ADDRESSES: Those attending in person must meet at the BLM, Utah State Office, 440 West 200 South, Salt Lake City, Utah, in the Monument Conference Room on the fifth floor. The conference call will be recorded for purposes of minute-taking.

FOR FURTHER INFORMATION CONTACT: If you wish to listen to the teleconference, orally present material during the teleconference, or submit written material for the Council to consider during the teleconference, notify Sherry Foot, Special Programs Coordinator, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone 801–539–4195; or, *sfoot@blm.gov* by Friday, May 10, 2013.

SUPPLEMENTARY INFORMATION: The RAC formed a subgroup to look at ways to constructively suggest improvements to the BLM-Utah National Landscape Conservation System Strategy. Results of their findings will be presented to the BLM-Utah and the RAC. A public comment period will take place immediately following the presentation. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Approved:

Jenna Whitlock,

Associate State Director.

[FR Doc. 2013–09109 Filed 4–17–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Ecolab Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Ecolab Inc., et al.,* Civil Action No. 1:13–cv–444. On April 8, 2013, the United States filed a Complaint alleging that the proposed acquisition by Ecolab Inc. of Permian Mud Service, Inc., would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Ecolab Inc. to divest certain assets Permian has been using to provide deepwater production chemical management services in the Gulf of Mexico.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments and responses thereto, will be filed with the Court and posted on the U.S. Department of Justice, Antitrust Division's Web site, and, under certain circumstances published in the **Federal Register**. Comments should be directed to William H. Stallings, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530, (telephone: 202–514–9323).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 5th Street NW., Suite 8000, Washington, DC 20001; *Plaintiff,* v.

ECOLAB INC., 370 Wabasha St. North, St. Paul, MN 55102, and Permian Mud Service, Inc., 3200 Southwest Freeway, Houston, TX 77027, *Defendants.*

Case 1:13–cv–00444, Filed 4/8/2013

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the acquisition of Permian Mud Service, Inc., (''Permian''), by Ecolab Inc. (''Ecolab''), and to obtain other equitable relief. The United States complains and alleges as follows:

I. Nature of the Action

1. Ecolab's acquisition of Permian would combine the two leading providers of production chemical management services for deepwater oil and gas wells (''deepwater PCMS'') in the U.S. Gulf of Mexico (''Gulf''). Deepwater PCMS providers design, produce, and apply specially formulated chemical solutions to oil or gas wells to facilitate hydrocarbon production and protect well infrastructure.

2. Permian's wholly owned subsidiary, Champion Technologies, Inc. (''Champion''), and Ecolab's wholly-owned subsidiary, Nalco Company (''Nalco''), are the two largest suppliers of deepwater PCMS in the Gulf and vigorously compete head-to-head to win the business of oil and gas exploration and production companies (''E&P companies''). If the transaction is allowed to proceed, this competition will be lost and the merged firm will control approximately 70% of the market, leading to higher prices, reduced service quality, and diminished innovation.

3. Accordingly, as alleged more specifically below, the acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. The Parties and the Transaction

4. Ecolab is a Delaware corporation headquartered in St. Paul, Minnesota. Nalco, its wholly-owned subsidiary, is headquartered in Naperville, Illinois and supplies the oil and gas industry with deepwater PCMS through its Energy Services Division. Ecolab generated $1.87 billion in revenues from oil and gas-related products and services in 2011. Nalco is currently the largest supplier of deepwater PCMS in the Gulf.

5. Permian is a Texas corporation headquartered in Houston, Texas. Permian provides specialty chemicals and services to the oil and gas industry and generated $1.25 billion in revenues in 2011. Permian's wholly-owned subsidiary, Champion, is also a Texas corporation and is currently the second largest provider of deepwater PCMS in the Gulf.

6. Pursuant to an agreement dated October 11, 2012, Ecolab agreed to purchase Permian for $2.2 billion. The Defendants amended the Agreement and Plan of Merger on November 28, 2012 (''First Amendment''), on November 30, 2012 (''Second Amendment'') to exclude certain assets and adjust the purchase price to $2.16 billion, and again on December 28, 2012 (''Third Amendment'').

III. Jurisdiction and Venue

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Ecolab and Permian provide deepwater PCMS in the flow of interstate commerce and their provision of deepwater PCMS substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Ecolab and Permian have consented to venue and personal jurisdiction in this judicial district.

IV. Trade and Commerce

A. The Provision of Deepwater PCMS in the Gulf

10. E&P companies rely on the services of deepwater PCMS providers to facilitate the safe and efficient production of oil and gas from deepwater wells in the Gulf. Throughout the production process, deepwater PCMS providers treat wells with blends of chemicals to prevent naturally occurring material, such as scale, paraffin, and hydrates, from blocking the flow of hydrocarbons to the production platform; protect the well's infrastructure from corrosion and damage; enable the E&P company to efficiently separate the mix of oil, water, and gas produced by the well; and remove or neutralize unwanted substances, such as hydrogen sulfide gas, from the production.

11. Although onshore and shallow water wells also require PCMS, deepwater wells (wells drilled in water depths greater than 1,000 feet) generally present challenging production issues due to the complex infrastructure of many deepwater wells and the high temperatures and pressures often found in deepwater wells.

12. Due to the time and expense required to construct a new production platform in deepwater, E&P companies frequently opt to build ''subsea wells,'' which can connect to existing offshore production platforms up to 70 miles away, instead of ''dry-tree'' wells, which must be stationed very close to the production platform. Deepwater PCMS providers must deliver chemicals to subsea wellbores through ''umbilicals,'' which are clusters of extremely narrow chemical injection, hydraulic, and fiber-optic lines that extend from the production platform to the well. Because of the complexities of this delivery system and the expense of repairing a chemical line clogged by impure or unstable chemicals, E&P companies impose strict qualification and quality control requirements on chemicals administered through umbilicals.

13. Strings of narrow piping called ''flow lines'' transport oil and gas from a subsea well to the production platform. Because flow lines run along the seafloor, they expose the produced oil, water, and gas to cold temperatures that cause solids to form and block the flow line. Deepwater PCMS providers must specially formulate chemicals for deepwater subsea wells that inhibit the formation or accumulation of solids during prolonged exposure to seafloor temperatures.

14. Deepwater wells often share characteristics that complicate production (*e.g.,* high pressures and temperatures), but each deepwater well has unique characteristics that determine its production challenges. E&P companies rely on PCMS providers to assess these characteristics and develop formulations specific to each well. When devising a treatment program, PCMS providers consider the makeup of the well's hydrocarbons, formation rock, and water; as well as conditions the hydrocarbons and chemicals will face inside the well and during production, such as extreme temperatures and pressures. PCMS providers test potential formulations in laboratories that can replicate conditions inside the well before settling on the chemical formulations, application techniques, and level of service they will recommend for a specific project.

15. A deepwater PCMS provider needs a strong staff of experts to successfully compete in the deepwater Gulf. E&P customers hire PCMS providers to assess and solve their production challenges and continuously manage the well's treatment. They expect PCMS providers to have highly trained and knowledgeable employees to monitor each well on an ongoing basis, devise new treatment programs when circumstances change, and prepare recommendations for potential opportunities. PCMS providers also require subject matter experts who can develop new products and technologies that are effective in whatever novel environments E&P companies operate.

16. E&P companies typically procure deepwater PCMS through a formal or informal bidding process. Potential suppliers are asked to submit a proposal including the recommended treatment plan; test results to support the treatment plan; prices; past experiences with similar well-conditions; safety records; information on the company's supply chain, training programs, lab facilities, and R&D programs; and the resumés or experience levels of proposed service personnel.

17. Customers choose a PCMS provider based on a number of factors, including, but not limited to, the efficacy of the proposed treatment program, price, the provider's prior track record servicing deepwater wells, and the provider's ability to offer timely and competent service. Customers also consider the provider's research and development (''R&D'') program and ability to advise on the optimal well design of new projects.

18. Although deepwater PCMS represents a fraction of an E&P company's overall cost of production, the costs associated with delay or failure are high. If the deepwater PCMS provider selects the wrong chemicals or fails to adequately monitor or service the well, it can cost the customer millions in lost production or compromise the well's infrastructure.

19. Because of the value of deepwater wells and the risks of improper treatment, some customers will only accept a bid for a particular project from a supplier whom it has thoroughly vetted and pre-qualified. As a result, deepwater PCMS providers sometimes compete to be designated as preferred or pre-qualified suppliers. Preferred suppliers may then bid against each other for specific projects.

20. There are often only two or three bidders for each deepwater PCMS contract in the Gulf, and the bidders typically know whom they are competing against for a particular project. Nalco and Champion are the two largest deepwater PCMS providers in the Gulf and compete head-to-head on a substantial number of deepwater PCMS opportunities.

B. The Provision of Deepwater PCMS Is a Relevant Product Market

21. The provision of deepwater PCMS is a relevant product market and line of commerce under Section 7 of the Clayton Act. E&P companies are unlikely to forego use of PCMS providers or switch to PCMS providers that only have experience onshore or in shallow water in response to a small but significant and non-transitory increase in deepwater PCMS prices.

22. The risks of not using a PCMS provider, or using a PCMS provider without deepwater operations or experience, greatly outweigh the potential cost savings. Deepwater wells present unique production issues and operational challenges. The costs of a clogged umbilical line are substantial,

while the cost of deepwater PCMS is a small fraction of the E&P company's total operational costs. Improper deepwater PCMS treatment can force an E&P company to replace a chemical line, shutdown production to make repairs, or forego the profits of full production rates achievable through proper PCMS treatment.

23. Deepwater PCMS are not reasonably interchangeable with onshore or shallow water PCMS. Because deepwater basins have unique characteristics and well infrastructure, providers of onshore or shallow water PCMS typically do not have the relevant know-how and experience required to effectively treat deepwater wells. Although there are some subsea wells in shallow water, they are typically closer to the production platform than deepwater subsea wells, so the operational difficulties engendered by umbilicals and flow lines are often less severe in shallow water. Additionally, the geological characteristics of shallow-water areas of the Gulf differ from its deepwater areas, so PCMS providers active in shallow water do not have the same familiarity or experience with the formation rocks or hydrocarbons found in deepwater. Importantly, because deepwater operations differ, onshore and shallow water PCMS providers also typically lack a complete suite of chemicals that can tolerate umbilical injection or the high pressures and temperatures typically found in deepwater wells and the necessary lab and filtration equipment to develop and qualify a chemical for umbilical injection or deepwater use.

C. The U.S. Gulf of Mexico Is a Relevant Geographic Market

24. The U.S. Gulf of Mexico is a relevant geographic market for the provision of deepwater PCMS under Section 7 of the Clayton Act. E&P companies operating in the Gulf are unlikely to switch to a PCMS provider without local infrastructure or Gulf-specific deepwater experience and expertise in the event of a small but significant and non-transitory increase in price.

25. E&P companies operating deepwater wells in the Gulf require their PCMS suppliers to have local infrastructure, such as distribution centers, blending facilities, analytical laboratories and sales and technical personnel, so that the PCMS provider can have the resources it needs nearby to monitor the well and quickly address production challenges. These E&P companies will not select a deepwater PCMS provider that lacks the Gulf-based infrastructure necessary to effectively service their projects.

26. Although experience in another deepwater basin may be relevant to deepwater Gulf operations, each deepwater basin presents unique production challenges resulting from its unique combination of hydrocarbons, produced water, and geological characteristics. PCMS providers operating in other deepwater basins are unlikely to have the depth of experience with the particular production challenges that frequently affect deepwater wells in the Gulf. Customers are unlikely to entrust their wells to PCMS providers without this essential experience.

D. Market Participants

27. The defendants are the two largest providers of deepwater PCMS in the Gulf. One additional firm has significant deepwater PCMS experience in the Gulf and regularly competes against Nalco and Champion for deepwater PCMS opportunities. A handful of other firms provide deepwater PCMS but lack the robust track record, requisite personnel, and proven product lines that make Champion and Nalco successful competitors. Additionally, these other firms do not compete for the majority of deepwater PCMS opportunities.

V. Likely Anticompetitive Effects

A. Market Shares and Concentration

28. The relevant market is highly concentrated and would become more concentrated as a result of the proposed transaction. Based on 2012 revenues, Champion's share of the deepwater PCMS market in the Gulf was 34% while Nalco's was 38%.

29. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (''HHI'').[1] Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition that would result in harm. Markets in which the HHI is above 2,500 points are considered highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power.

30. The deepwater PCMS market in the Gulf currently is highly concentrated, with an HHI of over 2,900. The proposed merger would significantly increase the HHI by 2,607, rendering the transaction presumptively anticompetitive.

B. Likely Anticompetitive Effects

31. Ecolab's acquisition of Permian would combine their respective subsidiaries, Nalco and Champion, the two leading deepwater PCMS providers in the Gulf, creating a dominant firm with a greater than 70% market share. Nalco and Champion vigorously compete on price, terms of sale, service quality, and product development. They have spurred each other to develop and improve products, performance and technology, and customers have benefitted from this competition. The transaction would eliminate the head-to-head competition between Nalco and Champion to provide deepwater PCMS in the Gulf.

32. Nalco and Champion provide deepwater PCMS to wells with similar production issues in similar water depths and are two of the few firms that have the manpower, technical capabilities and expertise to service the Gulf's most challenging wells. Nalco and Champion routinely bid against each other on the same deepwater projects in the Gulf and are considered by many E&P customers to be close substitutes.

33. Customers differentiate among deepwater PCMS providers on the basis of price, reputation, service quality, product effectiveness, and other factors. Nalco's acquisition of Champion would eliminate many customers' preferred alternative to Nalco and reduce the number of preferred or capable bidders on many projects from three to two. Post-acquisition, Nalco would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels, reduce its investment in R&D, or provide lower levels of service.

34. The response of the remaining deepwater PCMS firm would not be sufficient to constrain an exercise of market power by Nalco after the acquisition. Having removed its closest substitute for many customers, Nalco

[1] *See* U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.html*. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

would be aware that many customers now have a stronger preference for it as a supplier, allowing Nalco to raise prices above pre-acquisition levels, relax its service standards, and scale back its efforts to innovate. Deepwater PCMS providers in the Gulf that lack an established track record and experienced personnel are not invited to bid on many projects.

VI. Entry and Efficiencies

35. Entry by a new PCMS service provider or expansion of existing marginal suppliers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of Champion as an independent competitor.

36. Successful entry into the provision of deepwater PCMS in the Gulf is difficult, costly, and time consuming. To compete, a deepwater PCMS supplier must have local infrastructure, a full line of production chemicals designed for deepwater use, experienced staff, and a track record of successfully treating deepwater wells in the Gulf. Because of the significant investment E&P companies make in deepwater wells and the high costs of any problem or delay, these firms disfavor the risks of using new suppliers or switching between established suppliers, making it difficult for new PCMS providers to enter the market or grow their business.

37. Developing a track record of successfully treating deepwater wells in the Gulf is arduous and takes substantial time. E&P companies typically avoid the cost and delay involved in evaluating and monitoring a new supplier unless the existing supplier exhibits poor performance over a long period of time. Additionally, many E&P companies refuse to be the first customer to use a new deepwater PCMS provider, while others will only use a deepwater PCMS provider after the provider has developed a track record over a number of years.

38. A potential entrant may also face problems acquiring sufficient manpower to expand its business or enter at all. E&P companies require deepwater PCMS providers to commit a number of personnel with significant deepwater experience to the well, and also expect the provider to staff its laboratories and R&D facilities with deepwater experts. It takes existing deepwater PCMS providers years to train employees before they can accumulate deepwater experience and expertise.

39. Defendants cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to offset the transaction's anticompetitive effects.

VII. Violation Alleged

40. The effect of Ecolab's proposed acquisition of Permian if it were consummated, would likely be to lessen substantially competition for deepwater PCMS in the Gulf in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Unless restrained, the transaction would likely have the following effects, among others:

(a) Competition in the market for deepwater PCMS in the Gulf would be substantially lessened;

(b) prices for deepwater PCMS in the Gulf would increase;

(c) the quality of deepwater PCMS services in the Gulf would decrease; and

(d) innovation in the deepwater PCMS market in the Gulf would diminish.

VIII. Requested Relief

41. Plaintiff requests that this Court:

(a) Adjudge Ecolab's proposed acquisition of Permian to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition by Ecolab of Permian or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Ecolab and Permian;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

Dated: April 8, 2013.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

____/s/______

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____/s/______

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____/s/______

Katherine A. Celeste

United States District Court, District of Columbia

UNITED STATES OF AMERICA, *Plaintiff,* v.

ECOLAB INC., and PERMIAN MUD SERVICE, INC., *Defendants.*

Case No.: Case 1:13–cv–00444.

FILED: 04/08/2013.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Ecolab Inc. (''Ecolab'') and Defendant Permian Mud Service, Inc. (''Permian'') entered into an Agreement and Plan of Merger, dated October 11, 2012, pursuant to which Ecolab would acquire Permian (''proposed transaction''). Ecolab's wholly-owned subsidiary, Nalco Company (''Nalco'') and Permian's wholly-owned subsidiary, Champion Technologies, Inc. (''Champion''), compete head-to-head to provide production chemical management services for oil and gas wells drilled in over 1,000 feet of water (''deepwater PCMS'') in the United States Gulf of Mexico (''Gulf''). Nalco and Champion are the two leading providers of deepwater PCMS in the Gulf and together control over 70% of the market.

The United States filed a civil antitrust Complaint on April 8, 2013, seeking to enjoin Ecolab's acquisition of Permian. The Complaint alleges that the proposed transaction is likely to lessen competition substantially for deepwater PCMS in the Gulf in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition is likely to lead to higher prices, reduced service quality, and diminished innovation for deepwater PCMS in the Gulf.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the transaction. Under the proposed Final Judgment, the terms of which are explained more fully below, Ecolab is required to divest a package of assets that Champion has been using to provide deepwater PCMS in the Gulf. Under the terms of the Hold Separate Stipulation and Order, Ecolab will take certain steps to ensure that Champion is operated as a competitively independent, economically viable and ongoing business concern, that competition is maintained during the pendency of the ordered divestiture, and that the divestiture assets are preserved and maintained.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Industry

Ecolab provides products and services to the energy, foodservice, and healthcare, industries. Nalco, its wholly-owned subsidiary, supplies the oil and gas industry with deepwater PCMS through its Energy Services Division, which generated $1.87 billion in revenues in 2011. Nalco is currently the largest provider of deepwater PCMS in the Gulf.

Permian provides specialty chemicals and services to the oil and gas industry through its subsidiaries, which jointly generated $1.25 billion in revenues in 2011. Permian supplies deepwater PCMS through its wholly-owned subsidiary, Champion, which is currently the second largest provider of deepwater PCMS in the Gulf.

Deepwater PCMS providers treat deepwater oil and gas wells with blends of chemicals that prevent naturally occurring material, such as scale, paraffin, and hydrates, from blocking the flow of hydrocarbons to the production platform; protect well infrastructure and equipment from corrosion and damage; enable efficient separation of the mix of oil, water, and gas produced by the well; and remove or neutralize unwanted substances, such as hydrogen sulfide gas, from the production.

Oil and gas exploration and production companies (''E&P companies''), who own and operate oil and gas wells, must purchase production chemical management services to safely and efficiently produce oil and gas from onshore, shallow water, and deepwater wells (those drilled in over 1,000 feet of water). However, the complex infrastructure of deepwater wells often requires deepwater PCMS providers to develop solutions that are generally unnecessary onshore or in shallow water. For instance, due to the time and expense required to construct a new production platform in deepwater, E&P companies frequently opt to build deepwater ''subsea wells,'' which can connect to existing offshore production platforms up to 70 miles away, instead of ''dry-tree'' wells, which must be stationed very close to the production platform.

To service these wells, deepwater PCMS providers must deliver chemicals through ''umbilicals,'' which are clusters of extremely narrow chemical injection, hydraulic, and fiber-optic lines that extend from the production platform to the well. Because of the complexities of this delivery system and the expense of repairing a chemical line clogged by impure or unstable chemicals, E&P companies impose strict qualification and quality control requirements on chemicals administered through umbilicals.

Strings of narrow piping called ''flow lines'' transport oil and gas from a subsea well to the production platform. Because flow lines run along the seafloor, they expose the produced oil, water, and gas to cold temperatures that cause solids to form and block the flow line. Deepwater PCMS providers must specially formulate chemicals for deepwater subsea wells that inhibit the formation or accumulation of solids during prolonged exposure to seafloor temperatures.

In addition to these operational complexities, deepwater wells often present challenging production issues stemming from the high pressures and temperatures common in such wells. Each deepwater well has unique characteristics, which PCMS providers must assess to identify production challenges and develop an appropriate treatment plan. Deepwater wells also typically contain large reserves and are more expensive to repair than onshore or shallow water wells.

For these reasons, most E&P companies operating deepwater wells are extremely risk-averse and seek out PCMS providers and personnel with Gulf-specific deepwater experience and expertise to service their wells. They also typically require deepwater PCMS providers to have more sophisticated laboratories, research and development (''R&D'') programs, and supply chain and quality control operations than onshore or shallow water PCMS providers.

B. The Competitive Effects of the Transaction in the Market for Deepwater PCMS in the Gulf

1. The Provision of Deepwater PCMS Is a Relevant Product Market

The United States alleges that the provision of deepwater PCMS is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act. E&P companies are unlikely to forego use of PCMS providers or switch to PCMS providers that only have experience onshore or in shallow water in response to a small but significant and non-transitory increase in deepwater PCMS prices.

The risks of not using a PCMS provider, or using a PCMS provider without deepwater operations or experience, greatly outweigh the potential cost savings. Deepwater PCMS represent a fraction of the overall cost of producing oil and gas from a deepwater well, but improper deepwater PCMS treatment can cost an E&P company millions in lost production or compromise the well's infrastructure. As a result, E&P companies are unlikely to forego use of PCMS providers or switch to PCMS providers that only have experience onshore or in shallow water in response to a small but significant and non-transitory increase in deepwater PCMS prices.

Deepwater PCMS are not reasonably interchangeable with onshore or shallow water PCMS. Because deepwater basins have unique characteristics and well infrastructure, providers of onshore or shallow water PCMS typically do not have the relevant know-how and experience required to effectively treat deepwater wells. Although there are some subsea wells in shallow water, they are typically closer to the production platform than deepwater subsea wells, so the operational difficulties engendered by umbilicals and flow lines are often less severe in shallow water. Additionally, the geological characteristics of shallow-water areas of the Gulf differ from its deepwater areas, so PCMS providers active in shallow water do not have the same familiarity or experience with the formation rocks or hydrocarbons found in deepwater. Importantly, because deepwater operations differ, onshore and shallow water PCMS providers also typically lack a complete suite of chemicals that can tolerate umbilical injection or the high pressures and temperatures typically found in deepwater wells and generally do not have the necessary lab and filtration equipment to develop and qualify a chemical for umbilical injection or deepwater use.

2. The United States Gulf of Mexico Is a Relevant Geographic Market

The United States Gulf of Mexico is a relevant geographic market for the provision of deepwater PCMS under Section 7 of the Clayton Act. E&P companies operating in the Gulf are unlikely to switch to a PCMS provider without local infrastructure or Gulf-specific deepwater experience and expertise in the event of a small but significant and non-transitory increase in price.

E&P companies operating deepwater wells in the Gulf require their PCMS suppliers to have local infrastructure, such as distribution centers, blending facilities, analytical laboratories, and sales and technical personnel, so that the PCMS provider can have the resources it needs nearby to monitor the well and quickly address production challenges. These E&P companies will not select a deepwater PCMS provider that lacks the Gulf-based infrastructure necessary to effectively service the E&P companies' projects.

Although experience in another deepwater basin may be relevant to deepwater Gulf operations, each deepwater basin presents unique production challenges resulting from its unique combination of hydrocarbons, produced water, and geological characteristics. PCMS providers operating in other deepwater basins are unlikely to have the depth of experience with the particular production challenges that frequently affect deepwater wells in the Gulf. E&P companies are unlikely to entrust their wells to PCMS providers without this essential experience.

3. The Anticompetitive Effects of the Proposed Transaction

The market for the provision of deepwater PCMS in the Gulf is highly concentrated and would become more concentrated as a result of the proposed transaction. Based on 2012 revenues, a combined Champion and Nalco would control 70% of the market for deepwater PCMS in the Gulf.

The proposed transaction would eliminate the significant head-to-head competition between Nalco and Champion to provide deepwater PCMS in the Gulf. Nalco and Champion frequently compete for the same deepwater opportunities in the Gulf. They have spurred each other to develop and improve products, performance and technology, and customers have benefitted from this competition.

Nalco's acquisition of Champion would eliminate many customers' preferred alternative to Nalco and reduce the number of preferred or capable bidders on many projects from three to two. Post-acquisition, Nalco would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels, reduce its investment in R&D, or provide lower levels of service.

4. Entry and Expansion Are Unlikely To Prevent the Competitive Effects of the Proposed Transaction

Entry by a new PCMS service provider or expansion of existing suppliers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of Champion as an independent competitor.

Successful entry into the provision of deepwater PCMS in the Gulf is difficult, costly, and time-consuming. To compete, a deepwater PCMS supplier must have local infrastructure, a full line of production chemicals designed for deepwater use, experienced staff, and a track record of successfully treating deepwater wells in the Gulf. Because of the significant investment E&P companies make in deepwater wells and the high costs of any problem or delay, these firms disfavor using new suppliers or switching between established suppliers, making it difficult for new deepwater PCMS providers to enter the market or grow their business.

Developing a track record of successfully treating deepwater wells in the Gulf is arduous and takes substantial time. E&P companies typically avoid the cost and delay involved in evaluating and monitoring a new supplier unless the existing supplier exhibits poor performance over a long period of time. Additionally, many E&P companies refuse to be the first customer to use a new deepwater PCMS provider, while others will only use a deepwater PCMS provider after the provider has developed a track record over a number of years.

A new deepwater PCMS provider may also face challenges acquiring sufficient manpower to expand its business or enter at all. E&P companies require deepwater PCMS providers to commit a number of personnel with significant deepwater experience to the well, and also expect the provider to staff its laboratories and R&D facilities with deepwater experts. It takes existing deepwater PCMS providers years to train employees before they can accumulate deepwater experience and expertise.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate the likely anticompetitive effects of the merger in the market for deepwater PCMS in the Gulf by establishing a new, independent, and economically viable competitor. The package of divestiture assets provides the acquirer with the assets it needs to establish a significant presence in the Gulf and become an effective competitor, including the tangible and intangible assets that Champion currently uses to provide PCMS to deepwater wells in the Gulf, the option to acquire Champion's storage, distribution, filtration, and quality control facility in Broussard, Louisiana, and a short-term chemical supply agreement that will allow the acquirer to immediately begin supplying Champion customers with the production chemicals they currently use and trust. In addition, because experienced personnel are critical to success in the deepwater PCMS business in the Gulf—and will be even more important to a new entrant seeking to secure the trust and business of risk-averse customers—the divestiture package provides the acquirer with an expansive right to hire relevant Champion personnel without interference from the merged firm.

A. Identification of an Upfront Buyer

The overriding goal of the proposed Final Judgment is to provide the acquirer with everything it needs to effectively compete to provide deepwater PCMS in the Gulf. Where possible, the United States favors the divestiture of an existing business unit that has already demonstrated its ability to compete in the relevant market. In this case, however, neither Defendant has a standalone deepwater PCMS business in the Gulf. Rather, the employees, facilities, and other assets relating to the Defendants' deepwater PCMS operations in the Gulf are deeply intertwined with the Defendants' PCMS operations in other regions and other business lines. To ensure that the acquirer will have all assets necessary to be an effective, long-term competitor, while minimizing disruption to Defendants' broader operations, the proposed Final Judgment assembles a set of assets that will enable the acquirer to effectively preserve competition.

As explained in the *Antitrust Division Policy Guide to Merger Remedies,* the Antitrust Division may require an upfront buyer when a divestiture package is less than an existing business entity.[2] Here, Defendants have identified Clariant Corporation and its parent, Clariant International Ltd. (collectively, ''Clariant''), as an upfront buyer for the divestiture package. Clariant International Ltd. is a Swiss corporation that develops, produces, and markets chemicals for a variety of industries around the world. Clariant's Oil & Mining Services Group, headquartered in Houston, Texas, provides PCMS throughout the world. Clariant is the fourth largest PCMS provider globally and has significant deepwater PCMS experience outside the Gulf. Its ability to successfully manage a deepwater PCMS business in other regions provides confidence that with the divestiture package, it will be able to do so in the Gulf. Clariant has targeted the deepwater PCMS market in the Gulf as an area for growth, and recently built a state-of-the-art deepwater PCMS laboratory in The Woodlands, Texas. For these reasons, the United States has concluded that Clariant has the intent and capability, as a result of this settlement, to be an effective competitor in the provision of deepwater PCMS in the Gulf and is an acceptable acquirer of the divestiture assets. Therefore, the proposed Final Judgment designates Clariant as the Acquirer.[3]

B. The Divestiture Package

The divestiture package, which is fully described in the proposed Final Judgment, includes, among other things, Champion deepwater chemicals and know-how, a broad right to hire, the tangible and intangible assets Champion currently uses to serve customers in the Gulf, and additional rights and options designed to transfer know-how and customer accounts to the acquirer, which are discussed in more detail below.

1. Champion Deepwater Chemicals and Know-How

The proposed Final Judgment transfers to the acquirer the chemical formulations and know-how that allow Champion to successfully compete for deepwater PCMS opportunities in the Gulf. Going forward, the acquirer will have exclusive rights in the Gulf to provide the chemical formulations that Champion's current customers use and trust, and the know-how needed to apply these formulations effectively to current and future projects.

Defendants use a variety of specially-formulated chemical solutions to provide deepwater PCMS in the Gulf. Although many of the raw chemicals used in these blends are manufactured by third parties, each deepwater PCMS provider in the Gulf has its own unique formulations and know-how relating to the blending and use of these chemicals. These formulations and know-how represent an important qualitative aspect of the deepwater PCMS provided by the Defendants.

Established PCMS providers routinely rely on case histories and past performance data to identify the best chemical formulation for a new project and demonstrate its suitability to prospective customers. New entrants can only offer chemical formulations without a track record of success or wealth of instructive data points. The divestiture package gives the acquirer the ability to offer tried and true chemical formulations, which are expected to reduce customers' aversion to trying a new deepwater PCMS provider.

The proposed Final Judgment provides the acquirer with a patent for Champion's most lucrative production chemical in the Gulf, a low dose hydrate inhibitor critical to many E&P companies' operations in the deepwater Gulf, and exclusive licenses within the deepwater Gulf for all other production chemicals used by Champion in the Gulf.[4] It also provides the acquirer with the know-how and other intangible assets (*e.g.,* case histories, formulations, product bulletins, and manufacturing instructions) needed to effectively make and apply these production chemicals.

2. Right To Hire

The proposed Final Judgment provides the acquirer with an expansive right to hire all Champion employees whose job responsibilities relate to the provision of deepwater PCMS in the Gulf. As discussed above, the provision of deepwater PCMS is a service business in which customers place great weight on the expertise, know-how and experience of the individuals working on their accounts. The acquirer's right to hire Champion personnel with deepwater PCMS experience in the Gulf will provide the acquirer with the qualified employees it needs to serve Champion's existing accounts and compete for new projects.

The proposed Final Judgment contains numerous provisions to facilitate the acquirer's ability to hire and retain these employees. The Defendants will provide the acquirer with detailed information about each relevant employee, including his or her responsibilities, job titles, past deepwater PCMS experience in the Gulf, education, training, and salary. The Defendants also will grant the acquirer reasonable access to employees and the ability to interview them. The Defendants are specifically prohibited from interfering with the acquirer's negotiations to hire any relevant employee. For example, if an employee agrees to work for the acquirer, the Defendants must vest such employees' unvested pensions or other equity rights. Importantly, the Defendants must also waive any applicable non-compete or non-disclosure agreement covering information related to the divestiture assets so that the employee may freely provide services to the acquirer and its customers. To allow the acquirer time to develop the business without the risk of Defendants targeting relevant employees to undermine the divestiture, the Defendants are also prohibited for a period of time from soliciting to hire or hiring any relevant employee that is hired by the acquirer.

3. Broussard Facility and Laboratory Equipment

The proposed Final Judgment grants the acquirer the option to purchase certain facilities and lab equipment that Champion uses in connection with its deepwater PCMS Gulf business. These optional divestiture assets include Champion's Broussard, Louisiana warehouse and distribution facility, which also contains chemical filtration equipment and a quality control laboratory; Champion laboratory

[2] U.S. Department of Justice, Antitrust Division Policy Guide to Merger Remedies (June 2011), *available at http://www.justice.gov/atr/public/guidelines/272350.pdf.* (Identifying an upfront buyer provides greater assurance that the divestiture package contains the assets needed to create a viable entity that will preserve competition.).

[3] The proposed Final Judgment provides for an alternative sale should a problem arise with the upfront buyer. If the Defendants fail to divest the Divestiture Assets to Clariant within ten days of the Court signing the Hold Separate Stipulation and Order in this matter, the United States may request that the Court appoint a trustee to sell the Divestiture assets. The trustee may sell the Divestiture Assets to an acquirer acceptable to the United States.

[4] Champion uses these production chemicals to support other product lines (e.g., onshore PCMS) and other geographic regions, and Clariant, the likely acquirer, already has a full suite of production chemicals that it uses in other regions and for other applications. Therefore, the Division has determined that it is appropriate in this case for Defendants to retain rights to use these production chemicals outside the Gulf. *See Antitrust Division Policy Guide to Merger Remedies,* at 11 n. 23 (''When a patent covers the right to compete in multiple product or geographic markets, yet the merger adversely affects competition in only a subset of these markets, the Division will insist on the sale or license of rights necessary to effectively preserve competition in the affected markets. In some cases, this may require that the purchaser or licensee obtain the rights to produce and sell only the relevant product.'').

equipment used in providing deepwater PCMS; and tangible assets used to provide deepwater PCMS to any customer that elects to transition its contract or business to the acquirer. Customers prefer PCMS providers to have facilities and equipment close to the Gulf. Some potential acquirers—such as Clariant—already have similar facilities. The Final Judgment preserves maximum flexibility by granting the acquirer the option to secure the Champion facilities and equipment it needs to compete, without forcing it to purchase assets that are duplicative of its existing operations.

4. Supply of Chemicals

The proposed Final Judgment grants to the acquirer an option to enter into a short-term supply agreement with the Defendants for chemicals licensed or divested to the acquirer. This provision will provide the acquirer with a trusted supply chain while it makes arrangements to produce such chemicals in-house or obtain them from other manufacturers. The supply agreement will assure customers that they will receive the same chemicals from the acquirer that they are currently receiving from Champion.

The proposed Final Judgment does not require divestiture of Defendants' chemical manufacturing plants, which are substantial facilities that support their broader PCMS operations and have significantly more capacity than an acquirer would need to produce production chemicals for the deepwater Gulf.[5] Clariant has manufacturing capabilities that it can dedicate to production of chemicals for deepwater Gulf applications. Moreover, many chemical intermediates that are used to produce the finished production chemical are widely available commodities.

5. Customer Transfer

The proposed Final Judgment contains provisions designed to facilitate the transfer of current customer contracts to provide deepwater PCMS in the Gulf from Champion to the acquirer. In a typical divestiture of a line of business, the ongoing customer contracts usually will transfer with the business unit being divested. Here, there is no line of business being divested and contracts cannot be assigned without customer consent. To encourage customers to transition their business to the acquirer, the proposed Final Judgment contains certain incentives. For example, as discussed above, the acquirer will have the exclusive right to provide the chemicals Champion is currently providing deepwater PCMS customers in the Gulf, and access to the know-how and employees that currently allow Champion to provide deepwater PCMS to customers in the Gulf. As such, the acquirer will be able to step into Champion's shoes and continue to provide ongoing services to customers.

In addition, the proposed Final Judgment requires that the Defendants use their ''best efforts'' to convince customers to move their business to the acquirer. As a way of assuring customers that such a transition will be smooth, the proposed Final Judgment permits the acquirer to purchase the tangible assets used to provide PCMS to any customer that elects to transition its contract or business to the acquirer. At the option of the acquirer, the Defendants also must provide transitional services sufficient to meet the acquirer's needs for assistance in matters relating to the design, manufacture, formulation, testing, provision, or application of production chemicals for any customer. This provision will allow the acquirer broad access to Champion know-how or expertise related to its provision of deepwater PCMS in the Gulf not ascertainable through its divestiture of case histories and other intangible assets. Deepwater PCMS providers commonly cooperate to prevent operational challenges when a customer chooses a new provider to manage a platform or well. The proposed Final Judgment gives the acquirer the option of requesting additional assistance when taking over Champion's existing accounts.[6]

C. Procedures

The proposed Final Judgment requires Defendants to divest to Clariant the divestiture assets within 10 days after the Court signs the Hold Separate Stipulation and Order in this matter. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will used by the purchaser to compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the Acquirer.

In the event that Defendants do not accomplish the divestiture within the prescribed periods, the proposed Final Judgment provides that upon application by the United States, the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all of the trustee's costs and expenses. The trustee will have the authority to divest the divestiture assets to an acquirer acceptable to the United States. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the

[5] Each of the Defendants' manufacturing facilities contains a variety of vessels capable of performing distinct chemical reactions. No manufacturing plant is capable of performing all of the chemical reactions needed to manufacture a full suite of deepwater suitable chemicals. As a result, it is not possible to allocate a portion of a single plant to the Acquirer.

[6] Should a customer elect not to move its business to the acquirer, the proposed Final Judgment provides that Champion may continue to service that customer's business for a limited period of six months (extendable up to a total of one year at the sole discretion of the United States upon a showing of good cause).

effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

William H. Stallings, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Ecolab's acquisition of certain Champion assets. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of deepwater PCMS in the Gulf, the relevant market identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[7]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

[7] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[8] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 8, 2013.

Respectfully submitted,

__/s/___

Katherine A. Celeste

Trial Attorney, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture, 450 5th Street NW.; Suite 8000, Washington, DC 20530, Telephone: (202) 532–4713, Fax: (202) 616–2441, Email: Katherine.celeste@usdoj.gov.

Certificate of Service

I hereby certify that on April 8, 2013, I caused a copy of the foregoing Competitive Impact Statement, Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Plaintiff United States' Explanation of Procedures for Entry of the Final Judgment to be served on counsel for defendants in this matter in the manner set forth below:

By electronic mail:

Counsel for Defendant Ecolab Inc., John H. Lyons (DC Bar #453191), Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates, 1440 New York Ave. NW., Washington, DC 20005–2111, Tel: (202) 371–7333, Fax: (202) 661–0560;

Counsel for Permian Mud Service, Inc., Neil W. Imus (DC Bar # 394544), Vinson & Elkins LLP, 2200 Pennsylvania Avenue NW., Suite 500 West, Washington, DC 20037, Tel: (202) 639–6675, Fax: (202) 879–8875.

__/s/___

Katherine Celeste, Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8000, Washington, DC 20001, Telephone: (202) 532–4713, Facsimile: (202) 616–2441.

[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v.

ECOLAB INC., and PERMIAN MUD SERVICE, INC., Defendants.

Case 1:13–cv–00444. Filed 4/8/2013.

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on April 8, 2013, the United States and Defendants, Defendant Ecolab Inc. (''Ecolab'') and Defendant Permian Mud Service, Inc. (''Permian''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Clariant, the entity to which Defendants shall divest the Divestiture Assets.

B. ''AKA'' means a Production Chemical that has an identical formulation or chemical makeup as a Champion Deepwater Production Chemical but has a different SKU or product name.

C. ''Call-off Agreement'' means an agreement to provide production chemical management services for a particular asset, geographic region, or time period for a customer with whom the supplier has a Master Service Agreement in place.

D. ''Broussard Facility'' means Champion's facility and other assets located at 304 Ida Rd., Broussard, Louisiana 70518.

E. ''Champion'' means Champion Technologies, Inc., a Texas corporation with its headquarters in Houston, Texas, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Champion Deepwater Gulf PCMS Customer'' means any entity to which Champion provided PCMS in the Deepwater Gulf at any time between January 1, 2011 and the date the divestitures contemplated by this Final Judgment are completed.

G. ''Champion Deepwater Gulf Production Chemical'' means any Production Chemical used to treat an oil or gas producing well in the Deepwater Gulf, including, but not limited to, HI43 and those chemicals listed in Schedule A, and all related tangible and intangible assets.

H. ''Clariant'' means Clariant Corporation, the legal U.S. affiliate of Clariant International Ltd., headquartered in Charlotte, North Carolina, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Customer-Facing Relevant Employee'' means any employee who visits a Champion Deepwater Customer's Deepwater Gulf well or platform to provide PCMS, Relevant Employees who do not visit the Deepwater Gulf well or platform but directly supervise employees who do, or Relevant Employees who regularly interact with Champion Deepwater Gulf Customers but do not visit the customer's Deepwater Gulf wells or platforms on a regular basis.

J. ''Deepwater Gulf'' means the areas of the United States Gulf of Mexico that have water depths exceeding 1,000 feet.

K. ''Deepwater Gulf Well or Platform'' means a well, cluster of wells, or production facility associated with a well found in the Deepwater Gulf.

L. ''Divestiture Assets'' means:

(1) HI43 and all related Intellectual Property Rights;

(2) Exclusive, perpetual, paid-up, non-transferable licenses for use in the Deepwater Gulf to all Intellectual Property Rights related to Champion's provision of Deepwater Gulf PCMS and Champion Deepwater Gulf Production Chemicals that Champion has provided to a Deepwater Gulf PCMS Customer since January 1, 2012 for use in the Deepwater Gulf and any AKAs of such products. Such licenses will not be subject to any requirement to grant back to the Defendants any improvements or modifications made to these assets;

(3) All Intangible Assets, excluding Intellectual Property Rights, related to Champion's provision of Deepwater Gulf PCMS;

(4) The option to acquire the Broussard Facility and all tangible and intangible assets used by or located at the Broussard Facility that are used to design, develop, manufacture, market, service, package, filter, blend, distribute, or test Deepwater Gulf Production Chemicals or provide PCMS to Champion Deepwater Gulf PCMS Customers;

(5) The option to acquire the Deepwater Gulf Production Chemical Equipment listed in Schedule B, delivered to the Broussard Facility or to a U.S. location specified by the Acquirer; and

(6) For each Champion Deepwater PCMS Customer who elects to transition its contract or business to the Acquirer, the option to acquire the tangible assets maintained by Champion for the purpose of providing PCMS at that Deepwater Gulf PCMS Customer's Deepwater Gulf Well(s) or Platform(s).

M. ''Ecolab'' means Ecolab Inc., a Delaware corporation with its headquarters in St. Paul, MN, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

N. ''Gulf'' means the United States Gulf of Mexico.

O. ''HI43'' means Champion's low dose hydrate inhibitor Production Chemical claimed in U.S. Patent No. 7,381,689 and any reissue (and any foreign counterparts).

P. ''Intangible Assets'' means:

(1) know-how, including, but not limited to, recipes, formulas, machine settings, drawings, blueprints, designs, design protocols, standards, design tools, simulation capability, specifications, and application, manufacturing, blending, filtration, and testing techniques or processes;

(2) confidential information or any information that provides an advantage with respect to competitors by virtue of not being known by those competitors, including strategic information, business plans, contract terms, pricing, processes and compilations of information, information concerning customers or vendors, including vendor and customer lists, sales materials, and information regarding methods of doing business.

(3) data concerning historic and current research and development, including but not limited to, designs of experiments, and the results of unsuccessful designs and experiments;

(4) computer software, databases (*e.g.* databases containing technical job histories) and related documentation;

(5) contractual rights, to the extent they are assignable;

(6) all authorizations, permits, licenses, registrations, or other forms of permission, consent, or authority issued, granted, or otherwise made available by or under the authority of any governmental authority; and

(7) Intellectual Property Rights.

Q. ''Intellectual Property Rights'' means information, designs, creations, inventions, and other intangible property for which exclusive rights are recognized, including but not limited to, patents or patent applications, licenses and sublicenses, copyrights, trademarks, trade secrets, trade names, service marks, and service names.

R. ''The License-Back Period'' means the six (6) month period following Defendants' completion of the divestitures required by this Final Judgment, during which the Defendants are granted a license to use Champion Deepwater Gulf Production Chemicals with Intellectual Property Rights that have been transferred or licensed to the Acquirer.

S. ''Permian'' means Permian Mud Service, Inc., a Texas corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries (including Champion Technologies, Inc.), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

T. ''Production Chemicals'' means the blends of chemical intermediates and solvents that are introduced to the wellbore, topside equipment, umbilicals, flowlines or other well infrastructure of an oil or gas well to facilitate the production or flow of hydrocarbons from the wellbore to the topside equipment, protect the well's infrastructure and equipment, remove hazardous or undesirable elements from the hydrocarbons or produced water, and facilitate the separation of oil, gas, and water in the topside equipment.

U. ''PCMS'' means the provision of production chemical management services, including but not limited to product selection or design, front-end engineering design assistance, manufacture or blending of production chemicals, application of chemicals, or monitoring and testing of well conditions and product efficacy.

V. ''Relevant Employees'' means all Champion employees whose job responsibilities at any time between January 1, 2012 and the closing of the Transaction related to the provision of Deepwater Gulf PCMS.

W. ''Transaction'' means Ecolab's acquisition of Permian described in the ''Agreement and Plan of Merger'' between Ecolab, Permian, OFC Technologies Corp., and John W. Johnson, Steven J. Lindley, and J. Loren Ross, solely in their capacity as the Representatives, dated October 11, 2012, as amended.

X. ''Tangible Asset'' means any physical asset (excluding real property), including but not limited to:

(1) all machinery, equipment, hardware, spare parts, tools, fixtures, business machines, computer hardware, other information technology assets, furniture, laboratories, supplies, and materials, including but not limited to testing equipment, injection equipment, monitoring equipment, and storage vessels;

(2) improvements, fixed assets, and fixtures pertaining to the real property identified as a Divestiture Asset;

(3) all inventories, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto; and

(4) business records including financial records, accounting and credit records, tax records, governmental licenses and permits, bid records, customer lists, customer contracts, supplier contracts, service agreements; operations records including vessel logs, treatment logs, calendars, and schedules; job records, research and development records, health, environment and safety records, repair and performance records, training records, and all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees.

III. Applicability

This Final Judgment applies to Defendants Ecolab and Permian, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Divestitures

A. Defendants are ordered and directed, within ten (10) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets to the Acquirer in a manner consistent with this Final Judgment. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestiture for an additional period of time not to exceed sixty (60) days.

B. Defendants shall offer to furnish to the Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to the Acquirer. Any questions that arise during the due diligence process concerning whether particular assets are appropriately considered Divestiture Assets subject to this Final Judgment shall be resolved by the United States, in its sole discretion, consistent with the terms of this Final Judgment.

C. Defendants shall permit the Acquirer of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale. Defendants shall maintain and enforce all intellectual property rights licensed to the Acquirer and maintain and protect all trade secrets and confidential information furnished to the Acquirer pursuant to the proposed Final Judgment.

E. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

F. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

G. At the option of the Acquirer, the Defendants shall enter into a supply agreement, toll manufacturing, or toll blending agreement with the Acquirer to manufacture, blend or supply, any Champion Deepwater Gulf Production Chemical or component(s) thereof for a period of up to one (1) year, which may be extended by the United States, in its sole discretion, for an additional period of time not to exceed one (1) year. The Defendants shall manufacture and blend the Champion Deepwater Gulf Production Chemicals or chemical intermediates using the manufacturing, blending and quality assurance procedures used by Champion directly preceding the Divestiture unless the Acquirer authorizes a change. The Defendants shall also procure the raw materials or intermediates used to make the Champion Deepwater Gulf Production Chemicals from the same source used by Champion directly preceding the Divestiture unless the Acquirer authorizes a change. For each year of the tolling agreement, the Defendants shall supply up to 120% of the volume of Champion Deepwater Gulf Production Chemicals sold in the Deepwater Gulf in the prior year. The terms and conditions of such agreement shall be commercially reasonable and shall be subject to the approval of the United States, in its sole discretion.

H. At the option of the Defendants, the Acquirer shall enter into an agreement to provide the Defendants with:

(1) Non-exclusive, non-transferable fully paid-up licenses to provide any Champion Deepwater Production Chemical to Champion Deepwater Gulf PCMS Customers, for use in the Deepwater Gulf during the License-Back Period. Such licenses will be for the sole purpose of enabling the Defendants to continue providing those chemicals to a Champion Deepwater Gulf Customer during the License-Back Period. The United States, in its sole discretion, may

agree to an extension of the License-Back Period with respect to a particular customer for an additional period not to exceed six (6) months upon a showing of good cause, during which time the Defendants will retain the license to provide Champion Deepwater Production Chemicals to that particular Champion Deepwater Gulf PCMS Customer. The extension of this period with respect to a particular Champion Deepwater Gulf PCMS Customer does not alter the License-Back Period applicable to other Champion Deepwater Gulf PCMS Customers; and

(2) A perpetual, non-exclusive, non-transferable, fully paid-up license to make, have made, use, or sell HI43 outside the Deepwater Gulf. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for such licenses. Such license may, at the Acquirer's discretion, require the Defendants to grant back to the Acquirer any modifications or improvements made by the Defendants to HI43.

I. The Defendants shall use their best efforts to assign, subcontract, or otherwise transfer to the Acquirer any (i) contract to provide PCMS in the Deepwater Gulf, or (ii) portion of a Master Service Agreement or global agreement, including Call-off Agreements, between Champion and a Champion Deepwater Gulf PCMS Customer relating to the provision of Champion Deepwater Gulf PCMS in the Deepwater Gulf. To this end, the Defendants shall notify each Champion Deepwater Gulf PCMS Customer of the terms of this Final Judgment; release the Champion Deepwater Gulf PCMS Customer of any notice requirements or obligations that require the customer to use Champion's services or refrain from using another supplier's services with respect to any Deepwater Gulf assets; introduce the Acquirer to each Customer, request each Customer's consent to assign that Customer's contract to the Acquirer; and specifically inform each such Customer that the Defendants' rights to the divested Champion Deepwater Gulf Production Chemicals, in Deepwater Gulf, expire after six (6) months. The Defendants shall not encourage any Champion Deepwater Gulf Customer to request an extension of the License-Back Period.

J. At the option of the Acquirer, Defendants shall enter into a transition services agreement with that Acquirer sufficient to meet the Acquirer's needs for assistance in matters relating to the design, manufacture, formulation, testing, provision, or application of Production Chemicals and related services to any Champion Deepwater Gulf Customer for a period of up to three (3) months. The Acquirer may exercise this option during the License-Back Period and for three (3) months thereafter. The Defendant must make the personnel providing the transition services available during normal business hours. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance.

K. For a period of two (2) years following completion of the divestitures required by this Final Judgment, Defendants shall not, directly or indirectly, assign any Customer-Facing Relevant Employee to provide PCMS in the Deepwater Gulf to a Champion Deepwater Gulf PCMS Customer at a Deepwater Gulf Well or Platform for which the employee provided PCMS, directly or indirectly, while employed by Champion, except in connection with services provided to a Champion Deepwater Gulf PCMS Customer during the applicable License-Back Period for that customer.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the provision of PCMS for oil and gas wells located in the Deepwater Gulf, and that such divestiture will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section VI of this Final Judgment,

(1) shall be made to an acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of providing PCMS for oil and gas wells in the Deepwater Gulf; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an acquirer and Defendants give Defendants the ability unreasonably to raise the acquirer's costs, to lower the acquirer's efficiency, or otherwise to interfere in the ability of the acquirer to compete effectively.

V. Right To Hire

A. The Acquirer shall have the right to hire Relevant Employees while the License-Back Period is in effect with respect to any Champion Deepwater Gulf PCMS Customer. To enable the Acquirer to make offers of employment, Defendants shall provide the Acquirer and the United States with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to development, production, sale or administration of Production Chemicals for use in oil or gas wells in the Deepwater Gulf, responsibilities, training and educational history, relevant certifications, and, to the extent permissible by law, job performance evaluations, and current salary and benefits information.

B. Upon request, Defendants shall make the Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by the Acquirer to employ the Relevant Employees. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of Relevant Employees other than as a part of a company-wide increase in salary or benefits granted in the ordinary course of business.

C. For Relevant Employees who elect employment by the Acquirer, Defendants shall waive all non-compete agreements and all nondisclosure agreements, except as specified below, vest all unvested pension and other equity rights, and provide all benefits to which the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months after the Acquirer's right to hire expires, the Defendants shall not solicit to hire, or hire, any Relevant Employee hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that Defendants may solicit or hire that individual.

D. Nothing in this Section shall prohibit Defendants from maintaining any reasonable restrictions on the disclosure by an employee who accepts an offer of employment with the Acquirer of the Defendants' proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment and (2) unrelated to the Divestiture Assets.

VI. Appointment of Trustee

A. If the Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of the Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to sales by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The Defendants' failure to comply with Section IV(A) does not relieve the Defendants of their obligations to comply with the remainder of the terms in this Final Judgment. If a trustee is appointed, the acquirer procured by the trustee shall be deemed the Acquirer referenced in this Final Judgment. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (i) The trustee's efforts to accomplish the required divestitures; (ii) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (iii) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive contract for sale of any of the Divestiture Assets, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Sections IV or VI of this Final Judgment, and submit to the United States a copy of the proposed contract for sale and any other agreements with the Acquirer relating to the Divestiture Assets. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture, provided, however, that the United States may extend the period for its review up to an additional thirty (30) calendar days. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or VI of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

X. Affidavits

A. Within fifteen (15) calendar days after the Court signs the Hold Separate Stipulation and Order in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or VI, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: ____________

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

[TO BE SIGNED AFTER SUCH PROCEDURES]

____

United States District Judge

Schedule A

Material description	Product category
Defoamer V–149	Anti-Foam Production Chemicals.
Defoamer V–151	Anti-Foam Production Chemicals.
Defoamer V–159	Anti-Foam Production Chemicals.
Flotron M–239DW	Asphaltene Production Chemicals.
Flotron M–267DW	Asphaltene Production Chemicals.
Flotron PA–1000	Asphaltene Production Chemicals.
Flotron M–239	Asphaltene Production Chemicals.
Bactron K–103	Biocides Production Chemicals.
Bactron K–95	Biocides Production Chemicals.
Surfatron DQ–91	Biocides Production Chemicals.
RPA–102	Boiler Water Process Additives.
Capclean H–101DW	Capillary Cleaning Production Chemicals.
Capclean H–102DW	Capillary Cleaning Production Chemicals.
Capclean W–202DW	Capillary Cleaning Production Chemicals.
Acetic Acid, Glacial	Commodity Production Chemicals.
BC–215	Commodity Production Chemicals.
Toluene	Commodity Production Chemicals.
Xylene	Commodity Production Chemicals.
XyleneDW	Commodity Production Chemicals.
Cortron HRU–100	Corrosion Production Chemicals.
Cortron R–228	Corrosion Production Chemicals.
Cortron R–856	Corrosion Production Chemicals.
Cortron RN–177	Corrosion Production Chemicals.
Cortron RN–261	Corrosion Production Chemicals.
Cortron RN–384	Corrosion Production Chemicals.
Cortron RN–406	Corrosion Production Chemicals.
Cortron RN–466	Corrosion Production Chemicals.
Cortron RN–488	Corrosion Production Chemicals.
Cortron RU–142	Corrosion Production Chemicals.
Cortron RN–261FB	Corrosion Production Chemicals.
Cortron RN–466FB	Corrosion Production Chemicals.
Cortron RN–488DW	Corrosion Production Chemicals.
Cortron RN–488FB	Corrosion Production Chemicals.
Emulsotron X–1021	Demulsifiers Production Chemicals.
Emulsotron X–1164	Demulsifiers Production Chemicals.
Emulsotron X–1329	Demulsifiers Production Chemicals.
Emulsotron X–1523	Demulsifiers Production Chemicals.
Emulsotron X–1523DW	Demulsifiers Production Chemicals.
Emulsotron X–1665	Demulsifiers Production Chemicals.
Emulsotron X–1678	Demulsifiers Production Chemicals.
Emulsotron X–1808	Demulsifiers Production Chemicals.
Emulsotron X–203	Demulsifiers Production Chemicals.
Emulsotron X–316	Demulsifiers Production Chemicals.
Emulsotron X–421	Demulsifiers Production Chemicals.
Emulsotron X436B5	Demulsifiers Production Chemicals.
Emulsotron X–917	Demulsifiers Production Chemicals.
Emulsotron X–606	Demulsifiers Production Chemicals.
Emulsotron X–715	Demulsifiers Production Chemicals.
Emulsotron X–716	Demulsifiers Production Chemicals.
Emulsotron X–8292	Demulsifiers Production Chemicals.
Emulsotron X–942	Demulsifiers Production Chemicals.
FlowPlus DR–2000C	Flow Improvers Production Chemicals.
Surfatron DQ–76	General Surfactants Production Chemicals.
Surfatron DQ–86	General Surfactants Production Chemicals.
Assure HI–43DW	Hydrate Production Chemicals.
Assure HI–57DW	Hydrate Production Chemicals.
Assure HI–81	Hydrate Production Chemicals.
Flexoil FM–230DW	Paraffin Production Chemicals.
Flexoil FM–102DW	Paraffin Production Chemicals.
Flexoil FM–192DW	Paraffin Production Chemicals.
Flotron M–261DW	Paraffin Production Chemicals.
Flotron M–55	Paraffin Production Chemicals.
Gyptron EGP–5015	Scale Production Chemicals.
Gyptron SA1110N	Scale Production Chemicals.
Gyptron T–182	Scale Production Chemicals.
Gyptron T–255	Scale Production Chemicals.
Gyptron T–494	Scale Production Chemicals.
Gyptron T–94	Scale Production Chemicals.
Gyptron TA–13	Scale Production Chemicals.
Hydrochloric Acid, HCL, 15%	Scale Production Chemicals.
Hydrochloric Acid, HCL, 5%	Scale Production Chemicals.
Gyptron TA–21	Scale Production Chemicals.
Hydrochloric Acid	Scale Production Chemicals.
Gas Treat 164	Scavengers Production Chemicals.

Material description	Product category
Gas Treat 164FB	Scavengers Production Chemicals.
Gas Treat 164FBC	Scavengers Production Chemicals.
Cleartron HZB–48	Water Clarifier Production Chemicals.
Cleartron HZB–49	Water Clarifier Production Chemicals.
Cleartron PZ–20000	Water Clarifier Production Chemicals.
Cleartron ZB–103	Water Clarifier Production Chemicals.
Cleartron ZB–165	Water Clarifier Production Chemicals.
Cleartron ZB–167	Water Clarifier Production Chemicals.
Cleartron ZB–258	Water Clarifier Production Chemicals.
Cleartron ZB–279	Water Clarifier Production Chemicals.
Cleartron ZB–307	Water Clarifier Production Chemicals.
Cleartron ZB–374	Water Clarifier Production Chemicals.
Cleartron ZB–45	Water Clarifier Production Chemicals.
Cleartron ZB–543	Water Clarifier Production Chemicals.
Cleartron PZ–15000FB	Water Clarifier Production Chemicals.
Cleartron ZB–582	Water Clarifier Production Chemicals.
Cleartron ZB–83	Water Clarifier Production Chemicals.

Schedule B

Equipment name	General purpose
Densitometer	Product density.
FTIR	General product fingerprinting.
Brookfield viscometer	Product viscosity.
NVR analyzer	Product activity measurement.
Particle size analyzer	Particle size for deepwater products.
Shaker for particle testing	Homogenizing.
pH meter	pH measurement.
Hot bath, cold bath	General purpose.
Refrigerator	General purpose.
KF titrator	Water content analyzer.
Centrifuge	General purpose.
UV-Vis	General purpose for water analysis.
DSC	Was appearance temperature for an oil.
HTGC	Was content and wax distribution of an oil.
ICP	Water analysis, cations.
IC	Water analysis, anions.
AA	Water analysis (obsolete with ICP).
Balance	Various top loader and analysis balances.
Cold finger	Wax inhibitor screening.
Turbiscan	Asphaltene inhibitor screening.
Hot bath, cold bath, hot plate	Pour point testing, scale bottle testing, phase sep bottle testing, compatibility.
Bottle shaker	For shaking bottles.
Incubator	For bacteria bug bottles.
ATP meter	Bacteria rapid screen test.
IR Meter	Oil in water measurements.
Top stirred autoclave for AAHI testing (5000 psi)	Low pressure hydrate autoclave.
High pressure long term static stability test	Long term high pressure stability testing, built for one customer.
Refrigerated centrifuge	Accelerates the product aging process by adding centrifugal force.
Iotrascan	Saturate, aromatic, resins, and asphaltene analysis.
Hydrate Rocking Cell (5000 psi)	Standard hydrate rocking cell.
Defoamer test at pressurized conditions	Oil can be mixed with gas and depressurized to ambient conditions.

[FR Doc. 2013–09055 Filed 4–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 a.m., on Tuesday, February 12, 2013, at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss original jurisdiction cases pursuant to 28 CFR 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Jr., Cranston J. Mitchell, Patricia K. Cushwa, J. Patricia Wilson Smoot and Charles T. Masserone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 12, 2013.

Isaac Fulwood, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 2013–09255 Filed 4–16–13; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before May 20, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–015–C.

Petitioner: Affinity Coal Company, LLC, 110 Spring Drive, Blountville, Tennessee 37617.

Mine: Affinity Mine, MSHA I.D. No. 46–08878, 111 Affinity Complex Road, Sophia, West Virginia 25921, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.380 (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of its slope belt as an alternate escapeway to transport miners. The petitioner states that:

(1) The slope belt conveyor will be equipped with a backup generator to supply power to the slope belt in the event of power outage.

(2) The slope belt conveyor will be equipped with an automatic braking system to prevent the belt from reversing direction if power is lost.

(3) Positive acting stop controls will be installed along the slope belt conveyor and the controls will be readily accessible and maintained so that the belt can be stopped or started at any location.

(4) The slope belt conveyor will have a minimum vertical clearance of 18 inches from the nearest overhead projection when measured from the edge of the belt, and there will be at least 36-inches of side clearance where persons board and leave the slope conveyor.

(5) When persons are being transported on the slope belt conveyor, whether on regularly scheduled mantrips or as an emergency escape facility, the belt speed will not exceed 300 feet per minute when the vertical clearance is less than 24 inches and will not exceed 350 feet per minute when the vertical clearance is 24 inches or more.

(6) Adequate illumination including colored lights or reflectors will be installed at all loading and unloading stations on the slope conveyor belt. Such colored lights will be located as to be observable to all persons riding the conveyor belt.

(7) The slope conveyor belt will not be used to transport supplies and the slope conveyor will be clear of all material, including coal, before persons are transported.

(8) Telephone or other suitable communications will be provided at points where persons are loaded on or unloaded from the slope belt conveyor.

(9) Crossing facilities will be provided wherever persons must cross the moving slope conveyor or any other moving belt conveyor belt to gain access to or leave the mechanical escape facility.

(10) An operator will be stationed to turn the belt on and off.

(11) The slope belt conveyor will be examined by a certified person(s) at least once each week. The examination will include

(a) Operating the slope belt conveyor as an emergency escape facility.

(b) Examination for hazards along the slope belt conveyor and examination of the mechanical and electrical condition of the slope conveyor system.

(c) Immediate reporting of any hazards or mechanical deficiencies observed.

(d) Confirmation that any reported hazards or defects are corrected before the slope belt is used as a mantrip or serves as an emergency escapeway facility.

(12) The person(s) making the examination(s) required by the Proposed Decision and Order (PDO) will certify by initials, date and time the examination(s) was made. The certification will be at the loading and

unloading stations of the slope conveyor belt.

(13) Prior to implementing the modification requested in this petition, all persons who inspect, maintain, or ride the slope conveyor will be instructed in the special terms and conditions of this alternative method.

The petitioner asserts that the proposed alternative method will guarantee the miners affected no less than the same measure of protection afforded by the standard.

Docket Number: M–2013–016–C

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mine: Heilwood Mine, MSHA I.D. No. 36–09407, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.1710–1(a)(4) (Canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of shuttle cars without canopies in heights less than forty eight inches. The petitioner states that:

(1) The Lower Kittanning coal seam at Heilwood Mine is 26 to 54 inches high. Variations in coal height often are associated with the presence of sandstone channels which scour the coalbed and also contribute to irregular structure contours (i.e., seam rolls).

(2) The equipment consists of three Joy Shuttle Cars, Model #21SC.

(3) Due to widely varying seam heights, the shuttle car canopies often have to be lowered to their minimum height. In this lowered position, the forward window height varies from 6 to 8 inches among the three cars. The lowered canopy position greatly reduces visibility and line-of-sight for the equipment operator's which, in turn, increases the potential for ''struck by'' injuries to miners traveling or working in the vicinity of the equipment.

(4) Concern for ''struck by'' accidents is exacerbated by the fact that the cars are operating in narrow entries with less than normal clearances. The approved roof control plan limits entry width to a maximum of 18 feet and the entries actually are being maintained at about 16 feet to limit roof span and improve entry stability.

(5) The lowered canopy position creates cramped and physically stressful conditions for the equipment operators.

(6) To alleviate the cramped posture and limited visibility associated with the lowered canopy position, miners may be tempted to lean out of the side of the operator's compartment, which negates any benefit of the canopy and increases the potential for head/neck injuries.

(7) The mine roof at the Heilwood Mine varies substantially but currently, shuttle cars are operating in a section in which tensioned bolts, cable bolts, and roof channels are specified in the approved roof plan to be installed to ensure the stability of thinly laminated strata and/or interbedded sandstone and shale layers. The primary supports (fully grouted tensioned rebar bolts), supplemental supports (tensioned and non-tensioned cable bolts), and roof channels used to address these conditions protrude below the roof line and are more vulnerable to damage by moving equipment than traditional headed roof bolts.

(8) Mining heights on the section currently vary from 45 to 51 inches. However, measurements beneath the installed support measure as little as 41 inches. Much of the height reduction is associated with the bolt/cable/plate dimension below the roof line. Some loss of height is also due to floor heave. Despite the use of adequately sized pillars (safety factor approximately equal to 3.5), floor heave is sometimes evident on the mining section.

(9) The shuttle cars have been equipped with the lowest profile tire that can be practically employed (35x10x15). With these tires and the canopies in the lowest possible position, the shuttle car canopies extend 41 inches above the mine floor. Uneven bottom profiles (i.e., rolling seam conditions) and/or seam height variations in the mine cause the canopies to strike and dislodge roof bolts resulting in a damaged and weakened roof support system.

(10) Shuttle car operators will remain under supported roof at all times. Canopies will be used in areas where the mining height exceeds forty-eight (48) inches.

The petitioner asserts that the use of canopies on shuttle cars in mining heights less than forty eight inches in the Heilwood Mine results in a diminution of safety to the miners.

Docket Number: M–2013–017–C.

Petitioner: Highland Mining Company, LLC, 12312 Olive Boulevard, Suite 425, St. Louis, Missouri 63141.

Mine: Highland No. 9 Mine, MSHA I.D. No. 15–02709, 530 French Road, Waverly, Kentucky 42462, located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.1100–3 (Condition and examination of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for maintaining firefighting equipment in a usable and operative condition that will prevent freezing of the waterline and damage to connected firefighting equipment. The petitioner states that:

(1) As an alternative method of providing a waterline due to the freezing and subfreezing conditions experienced at the Highland No. 9 Mine site during cold weather, the petitioner proposes to establish, by designation, a dry waterline in the slope area of the mine to prevent water contained in the otherwise charged waterline from freezing, that could prevent water from flowing through the waterline during an emergency, or, by expansion, could damage the waterline and connected firefighting equipment.

(2) The area to be serviced by the dry waterline system is from the surface mouth of the slope to the slope bottom. Areas of the mine inby the designated terminus of the dry waterline system at the slope bottom will continue to be serviced by a charged waterline as currently installed and maintained.

(3) As an alternative to the waterline in the slope remaining charged at all times, the petitioner proposes to install a 2-inch dry-line the full length of the slope belt. Fire house outlets will be installed and maintained at each access door between the upper and lower levels of the slope not to exceed 300 feet. A water outlet will be installed and maintained coming from the steel main water supply at the belt tailpiece. All access doors between the upper and lower compartments will be maintained in working condition.

(4) The dry-line system will only be used October 1st through April 30th. During the remaining days of the year, the water line along the slope belt conveyor will remain charged with water. Before entering the mine, miners will be informed when the system is changed from normal to dry line and when it is changed back.

(5) Two electronically actuated solenoid valves installed in parallel will be in-line with the slope belt waterline located in an underground concrete hole located on the surface. Electrical power will be necessary to hold these valves in a closed position. The valves will return to the open position (charging the waterline) upon loss of voltage or when activated by computer.

(6) The solenoids valves will be connected to the carbon monoxide monitoring system through programmable logic controller (PLC) programming. The valves will be automatically activated if any carbon monoxide (CO) sensor along the slope,

including the first sensor inby the slope tailpiece, detects a concentration of CO that reaches 10 parts per million above the ambient level of CO specified in the mine approved ventilation plan. If there is a programmed delay on any of the CO sensors in the slope or the first CO sensor inby the slope tailpiece, then the valves will be activated at 20 parts per million above the ambient level of CO specified in the mine approved ventilation plan regardless of the delay. The solenoid valves are to be manually unlatched through the PLC programming once they are actuated.

(7) A manually operated bypass valve will be installed in parallel with the automatic valves. The manually operated valve will normally be closed and utilized to charge the waterline should both automatic valves fail. If a miner or miners are underground, a person trained in the location and operation of the manual bypass valve will be sent immediately to the valve if the CO at any slope sensor or the sensor inby the slope tailpiece reaches 5 parts per million above the ambient level of CO specified in the mine approved ventilation plan. If the automatic valves fail to open and charge the waterline at 10 parts per million CO above the ambient level of CO specified in the mine approved ventilation plan, then the person will open the manual bypass valve to charge the waterline.

(8) Water will automatically charge the line if either the solenoid or manual bypass is moved to the open position.

(9) The solenoid valves will be capable of being actuated and reset from the CO monitoring room. At least two miners on each shift and the Security Station staff will be trained in procedures for actuation and resetting the solenoid valves. A properly trained person will be available at all times (i.e., 24 hours each day, 7 days each week) to actuate and/or reset the valves.

(10) An outlet with a manual valve will be installed downstream of the solenoid valves just outside the underground concrete hole. This manual valve will be designated as a test/drain valve and will be closed except when testing the system or draining the water after testing or actuation.

(11) A manual valve will be installed just downstream of the test/drain valve. This valve will be open at all times, except when testing the system. During testing, this valve may be closed to isolate the dry-line, allowing the system to be tested without filling the entire length of the waterline.

(12) All valves and switches that are part of this system will be maintained operable and will be clearly marked and labeled in a conspicuous and reflective manner. All valves and switches will be located so that they are easily accessible for inspection and operation. Reflective signs will be conspicuously placed in the slope belt compartment indicating the location of each fire hose outlet.

(13) The dry-line system will be examined and functionally tested at intervals not to exceed 7 days. A record of the examinations will be recorded according to 30 CFR 75.364(h). Any deficiency will be corrected immediately and noted along with the corrective action in the record for the system. If any time the dry-line system does not function properly, the waterline will be charged with water until repairs are made to the system and testing shows proper operation. All miners will be immediately informed of any changes in the operational status of the dry-line system.

(14) Miners will be informed of any changes in the operational status of the dry-line system prior to entering the mine if it has changed since the last shift.

(15) Pressure relief valves will be located along the waterline to relieve pressure (entrapped air) when the waterline is charging.

(16) At least 500 feet of fire hose with necessary fittings and wrenches/tools will be stored in plastic storage containers near: (a) The slope mouth on catwalk area; and (b) the slope tailpiece. The containers will be conspicuously marked as to their contents and maintained in an untangled and orderly fashion. Additional fire hose will be kept at strategic locations (approximately 150 feet apart) to ensure that any affected area along the belt can be covered from the most proximate fire hose outlet.

(17) A system will be used to continuously monitor the communications between the CO monitoring system and the automatic solenoid valves. The waterline will be immediately charged with water if the CO system fails, if the CO sensors along the slope belt stop functioning properly, or if the communication between the CO monitoring system and the automatic solenoid valves is disrupted.

(18) Prior to implementing the dry-line system specified in the terms and conditions of the Proposed Decision and Order, the petitioner will submit to the District Manager proposed revisions to the Mine Emergency Evacuation and Firefighting Program of Instruction required by 30 CFR 75.1502. The proposed revisions will address training for all miners, including those required to remotely actuate and/or reset the solenoid valves. Additionally, pursuant to 30 CFR 75.1504(b)(5), miners will be trained quarterly on the operation of the fire suppression system, and the location and use of the firefighting equipment and materials. All miners will be trained in accordance with the approved revisions prior to implementation of the system.

The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners affected and/or otherwise provided by the existing standard.

Docket Number: M–2013–018–C.

Petitioner: Gibson County Coal, LLC, P.O. Box 1269, Princeton, Indiana 47670.

Mine: Gibson North Mine, MSHA I.D. No. 12–02215, located in Gibson County, Indiana.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i)(ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to permissible pumps in the Gibson North Mine. The petitioner states that:

(1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps.

(2) The maximum length of the 480-volt power for the permissible pump will be 4000 feet.

(3) The permissible pump will be no greater than 6.2 horsepower.

(4) The KVA rating of the power center supplying power to the pump will be 500 KVA.

(5) The 480-volt power for permissible pump trailing cable will not be smaller than No. 6 American Wire Gauge (AWG).

(6) All circuit breakers used to protect the No. 6 AWG trailing cables exceeding 500 feet in length will have an instantaneous trip unit calibrated to trip at 60 amperes. The trip setting of these circuit breakers will be sealed or locked, and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 6 AWG cables. This label will be maintained legible.

(7) Replacement instantaneous trip units used to protect No. 6 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 60 amperes and this setting will be sealed or locked.

(8) All circuit breakers used to protect No. 2 AWG trailing cables exceeding 500 feet in length will have instantaneous trip units calibrated to trip at 150 amperes. The trip setting of these circuit breakers will be sealed or

locked and will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting No. 2 AWG cables. This label will be maintained legible.

(9) Replacement instantaneous trip units used to protect No. 2 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 150 amperes. This setting will be sealed or locked.

(10) Permanent warning labels will be installed and maintained on the cover(s) of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter the sealed short-circuit settings.

(11) The alternative method will not be implemented until all miners designated to examine the integrity of the seals or locks, verify the short-circuit settings, and proper procedures for examining trailing cables for defects and damage have received training.

(12) Within 60 days after this proposed decision and order becomes final, the proposed revisions for the petitioner's approved 30 CFR part 48 training plan will be submitted to the District Manager. The training plan will include the following:

(a) Mining methods and operating procedures for protecting the trailing cables against damage.

(b) Proper procedures for examining the trailing cables to ensure safe operating condition.

(c) The hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables.

(d) How to verify the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Docket Number: M–2013–007–M.

Petitioner: McMurry Ready Mix Company, P.O. Box 2488, Casper, Wyoming 82602.

Mine: Crusher #2, MSHA I.D. No. 48–01363 and Crusher #3, MSHA I.D. No. 48–01518, located in Carbon County, Wyoming; Crusher #7, MSHA I.D. No. 48–01598, located in Converse County, Wyoming; and Crusher #4, MSHA I.D. No. 48–01569 and Crusher #6, MSHA I.D. No 48–01597, located in Natrona County, Wyoming.

Regulation Affected: 30 CFR 56.14205 (Machinery, equipment and tools).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of a chain attached material dislodging implement to facilitate the removal of oversize material stuck between the jaw plates of an aggregate jaw crusher. The following procedures will be used if material is lodged in the jaw crusher:

1. The jaw will be shut down and locked/tagged out.

2. Competent personnel will place a material dislodging implement attached to a chain in position next to the material stuck in the jaw. This will be done from a secure platform above the jaw plate opening. Fall protection will be used if necessary. The free end of the chain will be attached to the jaw crusher chassis.

3. All personnel will exit off the jaw and relocate to a safe distance away from the jaw crusher.

4. Lockouts will be removed by the applicable person(s) who will relocate to the designated safe area.

5. The jaw is started from a safe distance to allow the implement to free the material stuck in the jaw. If unsuccessful, steps 1 through 5 will be repeated.

6. Upon successfully clearing the material, the jaw will be shut down to retrieve the implement and chain.

The petitioner proposes to install cameras to allow observation of the jaw plates from the button house location. The button house is located at such distance from the jaw crusher as to not place occupants in the way of hazards associated with the material dislodging process. The dislodging implement itself will be stored in a locked cabinet when not in use. A designated competent person will have the only key to the cabinet ensuring non-authorized employees will not use the implement.

The typical procedure to remove material from between the jaw plates of a jaw crusher involves shutting down the crusher, locking out the energizing circuits, and having personnel enter the jaw opening to place hoisting devices around the material for vertical movement or extraction. The personnel's entrance into the jaw exposes them to the additional hazard of a possible shift of the material which could pin the person against the interior of the jaw or cause injuries due to trying to maneuver in a tight space.

The petitioner asserts that the intent of this proposed modification is to remove mine personnel from the hazard area thereby eliminating the chance of injury to mine personnel.

Dated: April 12, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–09081 Filed 4–17–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of Meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library and information services, will meet on May 9, 2013.

DATE AND TIME: Thursday, May 9, 2013, from 9:00 a.m. to 2:00 p.m.

PLACE: The meeting will be held at the Institute of Museum and Library Services, 1800 M Street NW., Suite 900, Washington, DC, 20036. Telephone: (202) 653–4798.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

AGENDA: Twenty-Seventh Meeting of the National Museum and Library Service Board Meeting: 9:00 a.m.–12:00 p.m. Twenty-Seventh National Museum and Library Services Board Meeting:

I. Welcome
II. Financial Update
III. Legislative Update
IV. Program Updates
V. Board Program
VI. Adjournment

(Open to the Public)

12:00 p.m.–2:00 p.m. Executive Session

(Closed to the Public)

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Program Specialist, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

Dated: April 11, 2013.

Nancy Weiss,

General Counsel.

[FR Doc. 2013–08995 Filed 4–17–13; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Administrative Burdens, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE & TIME: Monday, April 22, 2013, 2:30 p.m.–3:30 p.m. EDT.

SUBJECT MATTER: The meeting will include a discussion of the Task Force's Request for Information and ongoing roundtable discussions as well as discussion related to IACUCs and IRBs, the Emerging Frontiers in Research and Innovation (EFRI) Program, and the Office of Management and Budget's recent Proposed Guidance for Federal awards.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call 703–292–7000 or email to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to be directed to the public listening room.

UPDATES & POINT OF CONTACT: Please refer to the National Science Board Web site for additional information and schedule updates. This information which may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for the meeting is John Veysey, who can be reached at the telephone number or email listed above.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–09244 Filed 4–16–13; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103; NRC–2010–0264]

Uranium Enrichment Fuel Cycle Inspection Reports Regarding Louisiana Energy Services, National Enrichment Facility, Eunice, New Mexico, Prior to the Commencement of Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Michael Raddatz, Project Manager, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852; telephone: 301–492–3108; email: *Michael.Raddatz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff has conducted inspections of the Louisiana Energy Services (LES), LLC, National Enrichment Facility in Eunice, New Mexico, and has authorized the introduction of uranium hexafluoride (UF_6) into cascades numbered 2.9, 2.10, 2.11, 2.12, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, and 3.9. In addition, the NRC verified that the Phase 2a and Chemistry Laboratory of the Cylinder Receipt and Dispatch Building (CRDB) of the facility have been constructed in accordance with the requirements of the approved license. Phase 2a included the CRDB Civil Structure and CRDB shell operations such as: movement of cylinders; fire walls; transient combustible inspections; cylinder movers; and worker evacuation. The NRC staff has prepared inspection reports documenting its findings in accordance with the requirements of the NRC Inspection Manual, and these reports are available for review as specified in Section II of this notice. The publication of this notice satisfies the requirements of Section 70.32(k) of Title 10 of the *Code of Federal Regulations* (10 CFR), and section 193(c) of the Atomic Energy Act of 1954, as amended.

The introduction of UF_6 into any module of the National Enrichment Facility is not permitted until the NRC completes an operational readiness and management measures verification review to verify that management measures that ensure compliance with the performance requirements of 10 CFR 70.61 have been implemented and confirms that the facility has been constructed in accordance with the license and will be operated safely. Subsequent operational readiness and management measures verification reviews will continue throughout the various phases of plant construction and, upon completion of these subsequent phases, additional notices of the operation approval letters will be published in the **Federal Register** in accordance with 10 CFR 70.32(k).

II. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Inspection reports associated with the approval letters are referenced in the letters and are also available electronically in ADAMS. Accession numbers for the approval letters are being noticed here as follows:

NRC CASCADES AUTHORIZATION LETTERS

Authorization letters	Date	ADAMS accession No.
Cascade numbered 2.9	September 28, 2012	ML12272A189
Cascade numbered 2.10	September 14, 2012	ML12261A040
Cascade numbered 2.11	August 24, 2012	ML12237A190
Cascade numbered 2.12	July 16, 2012	ML12198A121
Cascade numbered 3.1	August 14, 2012	ML12227A401
Cascade numbered 3.2	September 25, 2012	ML12269A155

NRC CASCADES AUTHORIZATION LETTERS—Continued

Authorization letters	Date	ADAMS accession No.
Cascade numbered 3.3	October 31, 2012	ML12306A048
Cascade numbered 3.4	October 31, 2012	ML12306A048
Cascade numbered 3.5	November 21, 2012	ML12326A563
Cascade numbered 3.6	December 20, 2012	ML12355A171
Cascade numbered 3.7	January 14, 2013	ML13015A042
Cascade numbered 3.8	February 13, 2013	ML13044A527
Cascade numbered 3.9	March 14, 2013	ML13074A068

NRC AUTHORIZATION LETTERS RELATED TO THE CYLINDER RECEIPT AND DISPATCH BUILDING

Authorization letters	Date	ADAMS accession No.
CRDB Chemistry Laboratory	January 16, 2013	ML13016A011
CRDB Phase 2a	January 30, 2013	ML13030A327

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 11th day of April.

For the Nuclear Regulatory Commission.

Brian W. Smith,

Chief, Uranium Enrichment Branch, Division of Fuel Cycle Safety, and Safeguards Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2013–09127 Filed 4–17–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of amendment to system of records.

SUMMARY: OPM has amended an existing system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) to reflect the fact that the Office of Planning and Policy Analysis (PPA) is receiving Federal Employees Health Benefits Program (FEHBP) Health Claims data directly from some FEHBP carriers, and processing and analyzing this data within OPM. PPA is developing the alternative data intake process to acquire data from plans and/or carriers that are outside of the scope of existing OPM systems.

DATES: This action will be effective without further notice on May 20, 2013 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments by mail to the Office of Personnel Management, ATTN: Dennis Hardy, PMP, HCDW Project Manager, U. S. Office of Personnel Management, 1900 E Street NW., Room 2340A, Washington, DC 20415, or by email to *dennis.hardy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Hardy, PMP, HCDW Project Manager, 202–606–4281.

SUPPLEMENTARY INFORMATION: The Office of Planning and Policy Analysis, in cooperation with the OPM/Chief Information Officer (CIO), is implementing an alternate data intake and transformation infrastructure within the OPM environment to allow OPM to develop, process, and analyze this additional data in an expeditious manner. This alternate infrastructure, which is a scaled down version of the Health Claims Data Warehouse (HCDW) system, also provides a ''hot site'' disaster recovery capability should the primary environment be unavailable for data processing and/or analysis. This alternate infrastructure is easily scalable to support the demands of OPM. In addition to building the alternative data intake process, PPA will continue to receive carrier information from OPM's Office of Inspector General (OIG). The carrier data will be transmitted securely from the physically secured servers managed by OIG to the secure data intake infrastructure managed by OPM's OCIO. In total, PPA will be receiving data from nine plans and/or carriers. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency (5 U.S.C. 552a(e)(4)). OPM first published a system of records notice pertaining to the Health Claims Data Warehouse on October 5, 2010, with the comment period closing November 15, 2010. On November 15, 2010, OPM extended the comment period to December 15, 2010, and indicated its intent to modify certain aspects of the system of records notice. On December 15, 2010, OPM published a notice closing the comment period. Based on the comments received during the comment period, OPM issued a revised notice that, among other things, limited the scope of the system to information pertaining to FEHBP, significantly narrowed the circumstances under which routine use disclosures will be made from the system, clarified that only de-identified data will be released outside of OPM, provided greater detail regarding OPM authorities for maintaining the system, and further described systems security measures that will be taken to protect the records.

The purpose of this system of records is to provide a central database from which OPM may analyze costs and utilization of services associated with FEHBP to ensure the best value for both enrollees and taxpayers. OPM collects, manages, and analyzes health services data that health insurers and administrators provide through secure data transfer for the program. OPM's analysis of the data includes the cost of care, utilization of services, and quality of care for specific population groups, geographic areas, health plans, health care providers, disease conditions, and other relevant categories. The information contained in the database assists in improving the effectiveness and efficiency of care delivered by health care providers to the enrollees by facilitating robust contract negotiations, health plan accountability, performance management, and program evaluation. OPM uses identifiable data to create person-level longitudinal records, which are long-term health records that allow us to examine individual health information over time. Access to personally identifiable information is highly restricted to personnel needed to create person-level longitudinal records and to select OPM analysts using the database for analytical purposes.

Office of Personnel Management.

John Berry,

Director.

OPM CENTRAL—15

SYSTEM NAME:

Health Claims Data Warehouse (HCDW).

SYSTEM LOCATION:

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on the Federal Employees Health Benefits Program (FEHBP). The FEHBP includes Federal employees, Postal employees, uniformed service members, retirees, and their family members who voluntarily participate in the Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system may contain the following types of information on participating enrollees and covered dependents:

a. Name, social security number, date of birth, gender.

b. Home address.

c. Covered dependent information (spouse, dependents)—name, social security number, date of birth, gender.

d. Enrollee's employing agency.

e. Name of health care provider.

f. Health care provider address.

g. Health care provider taxpayer identification number (TIN) or carrier identifier.

h. Health care coverage information regarding benefit coverage for the plan in which the person is enrolled.

i. Health care procedures performed on the individual in the form of ICD, CPT and other appropriate codes.

j. Health care diagnoses in the form of ICD codes, and treatments, including prescribed drugs, derived from clinical medical records.

k. Provider charges, amounts paid by the plan and amounts paid by the enrollee for the above coverage, procedures, and diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for requiring FEHBP carriers to allow OPM access to records and for requiring reports, as well as authority for OPM's maintenance of FEHBP health claims information, is provided by 5 U.S.C. 8901, *et seq.* In particular, section 8910 states, in relevant part: ''(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefit plans available to employees and on the experience of the plans. (b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and (2) permit the Office and representatives of the Government Accountability Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.'' As explained in greater detail in the ''Purpose'' section below, OPM uses the information collected in this system to assist in its administration of, and in carrying out its functions under 5 U.S.C. chapter 89.

PURPOSE:

The primary purpose of this system of records is to provide a central database from which OPM may analyze the FEHBP to support the management of the program to ensure the best value for the enrollees and taxpayers. OPM collects, manages, and analyzes health services data provided by health insurers and administrators through secure data transfer. OPM analyzes the data in order to evaluate the cost of care, utilization of services, and quality of care for specific population groups, geographic areas, health plans, health care providers, disease conditions, and other relevant categories. Information contained in the database assists in improving the effectiveness and efficiency of care delivered by health care providers to the enrollees by facilitating robust contract negotiations, health plan accountability, performance management, and program evaluation. OPM uses identifiable data to create person-level longitudinal records. Access to PII is restricted to personnel needed to create person-level longitudinal records and to select OPM analysts using the database for the analytical purposes described in this notice. Only de-identified data will be released by OPM externally for all other research and analysis purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose FEHBP data to analysts inside and outside the Federal Government for the purpose of conducting analysis of health care and health insurance trends and topical health-related issues compatible with the purposes for which the records were collected and formulating health care program changes and enhancements to limit cost growth, improve outcomes, increase accountability, and improve efficiency in program administration. In all disclosures to analysts external to OPM under this routine use, only de-identified data will be disclosed. A public use file that will be maintained will only contain de-identified data and will be structured, where appropriate, to protect enrollee confidentiality where identities may be discerned because there are fewer records under certain demographic or other variables.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in electronic systems.

RETRIEVABILITY:

These records are retrieved by a unique identifier that will be based on identifying information (primarily name and social security number) of the individual.

SAFEGUARDS:

The Health Claims Data Warehouse (HCDW), to include the new alternate data intake and transformation infrastructure, is operated within the OPM environment. All employees who have a need to access the information are required to have an appropriate background investigation consistent with the risk and sensitivity designation of that position. The investigation must be favorably adjudicated before they are allowed physical access to OPM and access to the HCDW system. Employees of contractors are required to have an appropriate background investigation consistent with the credentialing policy of the agency and/or the terms of the underlying contract. Again, the investigation must be favorably adjudicated before they are allowed physical access to OPM and access to the HCDW system. The OPM environment is equipped with electronic badge readers restricting access to authorized personnel only and has safeguards in place to alert security personnel if unauthorized personnel attempt to gain access to OPM's environment. OPM employs armed physical security guards 365 days a year, 24 hours a day that patrol OPM headquarters, to include entry and exit points. Computer firewalls are maintained to prevent access by unauthorized personnel. The HCDW employs National Institute of Standards and Technology (NIST) Physical and Environmental Security Controls identified in Special Publication SP 800–53 revision 3. The HCDW will perform a Security Assessment and Authorization (SA&A) following the NIST 800–53 rev 3 standard in order to obtain an Authority to Operate (ATO). Users within the Office of Planning and Policy Analysis (PPA) use the system to perform cost and quality analysis for health care plans. Two sub-groups of PPA users have been identified in the system, those who are permitted to view PII and those who are not. HCDW employs role based access controls (RBAC) to further restrict access to data contained within HCDW based on users' roles. The data warehouse is fully compliant with all applicable provisions of the Privacy Act, Health Insurance Portability and Accountability Act (HIPAA) as an oversight agency, Federal Information Security Management Act (FISMA), Records Act and National Institute of Standards and Technology (NIST) guidance.

RETENTION AND DISPOSAL:

The records in this system are retained for 7 years. Computer records will be destroyed by electronic erasure. The system has been approved by NARA to maintain a 7-year record retention.

SYSTEM MANAGERS AND ADDRESSES:

The system manager is Dennis Hardy, PMP, HCDW Project Manager, U. S. Office of Personnel Management, 1900 E Street NW., Room 2340A, Washington, DC 20415, 202–606–4281.

NOTIFICATION AND RECORD ACCESS PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to the U.S. Office of Personnel Management, FOIA/PA Requester Service Center, 1900 E Street NW., Room 5415, Washington, DC 20415–7900 or by emailing *foia@opm.gov.* Individuals must furnish the following information for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social security number.
4. Signature.
5. Available information regarding the type of information requested.
6. The reason why the individual believes this system contains information about him/her.
7. The address to which the information should be sent.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should write to the Office of Personnel Management, FOIA/PA Requester Service Center, 1900 E Street NW., Room 5415, Washington, DC 20415–7900. ATTN: Planning and Policy Analysis.

Individuals must furnish the following information in writing for their records to be located:

1. Full name.
2. Date and place of birth.
3. Social Security Number.
4. City, state, and zip code of their Federal Agency.
5. Signature.
6. Precise identification of the information to be amended.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR 297).

RECORD SOURCE CATEGORIES:

OPM, which has the authority to obtain this information from health care insurers and administrators contracted by OPM to manage the FEHBP, will obtain the FEHBP records from health care insurers and administrators. OPM's OIG also maintains the FEHBP records in a separate system of records under its own authorities.

SYSTEM EXEMPTIONS:

None.

[FR Doc. 2013–09133 Filed 4–17–13; 8:45 am]

BILLING CODE 6325–63–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c3–1; SEC File No. 270–197, OMB Control No. 3235–0200.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c3–1 (17 CFR 240.15c3–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c3–1 requires brokers-dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. The rule facilitates the monitoring of the financial condition of broker-dealers by the Commission and the various self-regulatory organizations. It is estimated that broker-dealer respondents registered with the Commission and subject to the collection of information requirements of Rule 15c3–1 incur an aggregate annual time burden of 71,818 hours to comply with this rule and an aggregate annual external cost of $160,000.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 15, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09139 Filed 4–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30462; 812–14148]

The Royal Bank of Scotland plc, et al.; Notice of Application and Temporary Order

April 12, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a guilty plea entered on April 12, 2013, by RBS Securities Japan Limited (the ''Settling Firm'') in the U.S. District Court for the District of Connecticut (''District Court'') in connection with a plea agreement between the Settling Firm and the U.S. Department of Justice (''DOJ''), until the Commission takes final action on an application for a permanent order. Applicants have also applied for a permanent order.

APPLICANTS: The Royal Bank of Scotland plc (''RBS plc''), Citizens Investment Advisors (''Citizens IA''), a separately identifiable department of RBS Citizens, N.A., and the Settling Firm (each an ''Applicant'' and collectively, the ''Applicants'').[1]

Filing Date: The application was filed on April 12, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 7, 2013, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: RBS plc, RBS, Gogarburn, PO Box 1000, Edinburgh, EH12 1HQ, Scotland; Citizens IA, c/o RBS Citizens, N.A., Mail Stop RC 03–30, One Citizens Plaza, Providence, Rhode Island 02903; Settling Firm, Shin-Marunouchi Center Building, 1–6–2 Marunouchi, Chiyoda-ku, Tokyo 100–0005, Japan.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Applicant is either a direct or indirect wholly-owned subsidiary of The Royal Bank of Scotland Group plc (''RBSG''). RBSG and RBS plc, a company organized under the laws of Scotland, are international banking and financial services companies that provide a wide range of products and services to companies around the world. Citizens IA, an investment adviser registered under the Investment Advisers Act of 1940, is a separately identifiable department of RBS Citizens, N.A. Citizens IA serves as investment sub-adviser to Aquila Narragansett Tax-Free Income Fund (the ''Fund'') (such activity, ''Fund Service Activities''). The Settling Firm, a company with its principal place of business in Tokyo, Japan, engages in securities business operations, including derivatives trading.

2. On April 12, 2013, the Fraud Section of the Criminal Division and the Antitrust Division of the DOJ filed a one-count criminal information (the ''Information'') in the District Court charging one count of wire fraud, in violation of Title 18, United States Code, Section 1343. The Information charges that between approximately 2006 and at least 2010, the Settling Firm engaged in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf by secretly manipulating benchmark interest rates to which the profitability of those trades was tied. The Information charges that, in furtherance of this scheme, on or about October 5, 2009, the Settling Firm committed wire fraud in violation of Title 18, United States Code, Section 1343 by transmitting, or causing the transmission of, (i) An electronic chat between a derivatives trader employed by the Settling Firm and an RBS plc derivatives trader, (ii) a subsequent submission for the London InterBank Offered Rate for Japanese Yen (''Yen LIBOR'') to Thomson Reuters, and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires.

3. Pursuant to a plea agreement (the ''Plea Agreement''), attached as exhibit to the application, the Settling Firm entered a plea of guilty (the ''Guilty Plea'') on April 12, 2013, in the District Court. In the Plea Agreement, the Settling Firm, among other things, agreed to a fine of $50 million. Applicants expect that the District Court will enter a judgment against the Settling Firm that will require remedies that are materially the same as set forth in the Plea Agreement. In addition, RBS plc entered into a deferred prosecution agreement with DOJ (the ''Deferred Prosecution Agreement'') relating to submissions of the Yen LIBOR and other benchmark interest rates. In the Deferred Prosecution Agreement, RBS plc has agreed to, among other things, (i) Continue to provide full cooperation with DOJ and any other law enforcement or government agency designated by DOJ until the conclusion of all investigations and prosecutions arising out of the conduct described in the Deferred Prosecution Agreement; (ii) strengthen its internal controls as required by certain other U.S. and non-U.S. regulatory agencies that have addressed the misconduct described in the Deferred Prosecution Agreement; and (iii) the payment of $150 million, which includes amounts incurred by the Settling Firm for criminal penalties arising from the Judgment. The individuals at the Settling Firm and at any other Covered Person who were identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agencies as being responsible for the conduct underlying the Plea Agreement, including the conduct described in any of the exhibits

[1] Applicants request that any relief granted pursuant to the application also apply to any existing or future company of which the Settling Firm is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the ''Covered Persons'') with respect to any activity contemplated by section 9(a) of the Act.

thereto (the ''Conduct''), have either resigned or have been terminated.[2]

Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, a broker or dealer. Section 2(a)(10) of the Act defines the term ''convicted'' to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Settling Firm is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that the Guilty Plea would result in a disqualification of each Applicant for ten years under section 9(a) of the Act because the Settling Firm would become the subject of a conviction described in 9(a)(1).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct did not involve any of the Applicants' Fund Service Activities, and that the Settling Firm does not serve in any of the capacities described in section 9(a) of the Act. Additionally, Applicants assert that the Conduct did not involve the Fund or the assets of the Fund. Applicants further assert that (i) None of the current or former directors, officers or employees of the Applicants (other than certain personnel of the Settling Firm and RBS plc who were not involved in any of the Applicants' Fund Service Activities) had any knowledge of, or had any involvement in, the Conduct; (ii) no former employee of the Settling Firm or of any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant or of any other Covered Person; (iii) no employee of the Settling Firm or of any Covered Person who was involved in the Conduct had any, or will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the personnel of the Applicants (other than certain personnel of the Settling Firm and RBS plc who were not involved in any of the Applicants' Fund Service Activities) did not have any involvement in the Conduct, shareholders of the Fund were not affected any differently than if the Fund had received services from any other non-affiliated investment adviser. Applicants have agreed that neither they nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

5. Applicants further represent that the inability of Citizens IA to continue providing Fund Service Activities would result in potential hardships for both the Fund and its shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of trustees of the Fund, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Guilty Plea, any impact on the Fund, and the application. The Applicants will provide the Fund with all information concerning the Plea Agreement and the application that is necessary for the Fund to fulfill its disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if Citizens IA was barred from providing Fund Service Activities to the Fund, the effect on its business and employees would be severe.

7. Applicants state that none of the Applicants has previously applied for an exemptive order under section 9(c) of the Act.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or of any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, RBS plc or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct, in any capacity, without first making a further application to the Commission pursuant to section 9(c).

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary

[2] The Applicants note that a junior level employee of a Covered Person (the ''Employee'') who was not responsible for the Conduct remains employed by a Covered Person. The Applicants have concluded that the Employee was not responsible for the Conduct and the Employee has not been identified by any U.S. or non-U.S. regulatory or enforcement agencies as being responsible for the Conduct. The Applicants acknowledge that the Commission has not been asked to determine, and has not determined, whether or not the Employee is responsible for the Conduct.

exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Guilty Plea, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09118 Filed 4–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30460; 812–14113]

Trust for Professional Managers and Aurora Investment Management L.L.C.; Notice of Application

April 12, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and that would grant relief from certain disclosure requirements.

APPLICANTS: Trust for Professional Managers (the ''Trust'') and Aurora Investment Management L.L.C. (the ''Initial Advisor'').

FILING DATES: The application was filed January 17, 2013, and amended on April 3, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 7, 2013, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: John P. Buckel, Trust for Professional Managers, 615 East Michigan Street, Milwaukee, WI 53202; Scott M. Montpas, Esq., Aurora Investment Management L.L.C., 300 North LaSalle Street, 52nd Floor, Chicago, IL 60654.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently consists of 28 series, one of which is advised by the Initial Advisor.[1] The Initial Advisor is a limited liability company organized under Delaware law. The Initial Advisor is, and any other Advisor will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor will serve as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (each an ''Advisory Agreement'' and collectively, the ''Advisory Agreements'').[2] Each Advisory Agreement was or will have been approved by each Fund's respective shareholder(s) and the board of trustees of the Trust (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Fund, or the Advisor (''Independent Trustees'') in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

2. Under the terms of each Advisory Agreement, the Advisor will provide each Fund with overall management services and, as it deems appropriate, will continuously review, supervise and administer each Fund's investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to each Fund, the Advisor will receive the fee specified in the Advisory Agreement from such Fund, payable monthly at an annual rate based on the average daily net assets of the Fund. The Advisory Agreement permits the Advisor to delegate certain responsibilities to one or more subadvisors (each a ''Subadvisor''), subject to the approval of the Board.[3]

3. Each Subadvisor will be an investment adviser as defined in section 2(a)(20) of the Act and will be registered with the Commission as an ''investment adviser'' under the Advisers Act. The Advisor will evaluate, allocate assets to and oversee the Subadvisors, and make recommendations about their hiring, termination, and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Subadvisors out of the advisory fee paid by a Fund to the Advisor under the Advisory Agreement.

4. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Subadvisors to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially

[1] Applicants are not requesting relief for any series other than those advised by the Advisor (as defined below). Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company that: (a) Is advised by the Initial Advisor or a person controlling, controlled by, or under common control with the Initial Advisor or its successor (each, an ''Advisor''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the requested order (any such series, a ''Fund'' and collectively, the ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant, and the only Fund that currently intends to rely on the requested order is the Aurora Horizons Fund. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadvisor (as defined below), that name will be preceded by the name of the Advisor.

[2] Each future investment advisory agreement between an Advisor and a Fund is also included in the term ''Advisory Agreement''. The Initial Advisor currently serves as investment advisor only to the Aurora Horizons Fund, a series of the Trust, under the Advisory Agreement.

[3] As of the date of the amended application, the Advisor has entered into subadvisory agreements (''Subadvisory Agreements'') with Chicago Fundamental Investment Partners, LLC, First Oak Capital Management LLC, Graham Capital Management, L.P., Kabouter Management, LLC, Kingsford Capital Management, LLC, Kovitz Investment Group, LLC, Lansdowne Partners Limited Partnership, MPAM Credit Trading Partners L.P., PEAK6 Advisors LLC, and York Registered Holdings, L.P. None of the existing Subadvisors is affiliated with the Advisor.

amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Advisor, other than by reason of serving as a Subadvisor to one or more of the Funds (''Affiliated Subadvisor'').[4]

5. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require the applicants to disclose fees paid by the Advisor to each Subadvisor. Applicants seek an order to permit the Trust to disclose for a Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to the Advisor and any Affiliated Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Affiliated Subadvisors (collectively, ''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Subadvisor will provide separate disclosure of any fees paid to the Affiliated Subadvisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation. Applicants state that this provision may require a Fund to disclose the fees the Advisor pays to each Subadvisor.

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Securities Exchange Act of 1934. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the rate of compensation of the investment adviser, the aggregate amount of the investment adviser's fees, a description of the terms of the contract to be acted upon, and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees. Applicants believe that these provisions may require a Fund to disclose the fees the Advisor pays to each Subadvisor in proxy statements for shareholder meetings at which fees would be established, or action would be taken on an advisory contract.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about investment advisory fees. Applicants state that these provisions may be deemed to require the Funds' financial statements to include information concerning fees paid to the Subadvisors.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants state that, by investing in a Fund, shareholders will hire the Advisor to manage the Fund's assets in conjunction with using its investment subadvisor selection and monitoring process. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisors is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants believe that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Advisor and Board consider it appropriate to hire Subadvisors or amend Subadvisory Agreements. Applicants note that the Advisory Agreements and any Subadvisory Agreements with Affiliated Subadvisors will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Subadvisor is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Subadvisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadvisor is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[5] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants assert that a proxy solicitation to approve the appointment of new Subadvisors would provide no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Subadvisory Agreements.

8. Applicants assert that the requested disclosure relief will benefit shareholders of the Funds because it will improve the Advisor's ability to negotiate the fees paid to Subadvisors. Applicants state that the Advisor may be able to negotiate rates that are below a Subadvisor's ''posted'' amounts if the Advisor is not required to disclose the Subadvisors' fees to the public.

[4] Shareholder approval of a Subadvisory Agreement with an Affiliated Shareholder will be obtained. If a Subadvisor change is proposed for a fund with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage. The Initial Advisor currently intends to enter into Subadvisory Agreements only with non-affiliated Subadvisors.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadvisor; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the Manager of Managers Structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadvisor within 90 days after the hiring of a new Subadvisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadvisor change is proposed for a Fund with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

9. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisors; (iv) monitor and evaluate the performance of Subadvisors; and (v) implement procedures reasonably designed to ensure that the Subadvisors comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or of a Fund, or director or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor, except for (a) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09099 Filed 4–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69369; File No. SR–BYX–2013–008]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending the Attestation Requirement of Rule 11.24 Allowing a Retail Member Organization To Attest That ''Substantially All'' Orders Submitted to The Retail Price Improvement Program Will Qualify as ''Retail Orders''

April 12, 2013.

On February 12, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow Retail Member Organizations (''RMOs'') to attest that ''substantially all,'' rather than all, orders submitted to the Retail Price Improvement Program qualify as ''Retail Orders.'' The proposed rule change was published for comment in the **Federal Register** on March 1, 2013.[3] To date, the Commission has received one comment on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 15, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule changes so that it has sufficient time to consider the Exchange's proposal, which would lessen the attestation requirements of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68975 (Feb. 25, 2013), 78 FR 13915.

[4] *See* Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

[5] 15 U.S.C. 78s(b)(2).

RMOs that submit ''Retail Orders'' eligible to receive potential price improvement through the Retail Price Improvement Program, and to consider the comment letter that has been submitted in connection with the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 30, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BYX–2013–008).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09123 Filed 4–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–69365; File No. SR–ISE–2013–14]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change To List Options on the Dow Jones FXCM Dollar Index

April 11, 2013.

I. Introduction

On February 13, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain of its rules to provide for the listing of options on the Dow Jones FXCM Dollar Index. The proposed rule change was published for comment in the **Federal Register** on February 28, 2013.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of options on one foreign currency index—the Dow Jones FXCM Dollar Index (the ''Dollar Index''). Options on the Dollar Index will be settled in the same manner as the Exchange's foreign currency options (''FX Options'')[4] and will have European-style exercise provisions. In addition to regular options, the Exchange proposes also to list long-term options on the Dollar Index.

Index Design and Composition

The Dollar Index is calculated and maintained by Dow Jones Indexes, a unit of CME Group. The components that comprise the Dollar Index include a subset of the modified exchange rates[5] previously approved by the Commission as the basis for FX Options. Specifically, the Dollar Index is based on four currency pairs that reflect U.S. dollar fluctuations against the following currencies: euro, British pound, Japanese yen, and Australian dollar.

Spot currency quotes are derived from Thomson Reuters, the same source that the Exchange currently uses for the underlying values of its existing FX Options. Each input value is based on the mid-point between the bid and ask quotes. The Dollar Index has a base date of January 1, 2011, using closing prices as of December 31, 2010. The base value of the Dollar Index is 10,000. Spot quotes for each currency pair on the base date are as follows:

EUR/USD	1.3370
GBP/USD	1.5601
USD/JPY	81.21
AUD/USD	1.0218

On its base date, the Dollar Index was set to be equally-weighted such that each constituent currency pair has equal influence on the overall index value. This method is similar to equally-weighted stock indexes that calculate the number of shares needed in order for each stock constituent to have an equal position. The Dollar Index is designed to reflect spot positions in each currency with the weighting of each currency set as equal at inception and rebalancing events. Rebalancing events are not scheduled. The Dollar Index would be rebalanced if, for example, the value of any position were to fall below $1,000 (i.e., loses 90 percent of its original $10,000 position value), or in response to extraordinary events affecting the global currency market.[6] At that point, each currency is again set to an equal position. The Exchange has represented that the total number of components in the Dollar Index will not decrease from the number of components in the Dollar Index at the time of its initial listing.[7]

Index Calculation and Maintenance

As noted above, the Dollar Index will be maintained and calculated by Dow Jones. The level of the Dollar Index will reflect the current exchange rates of the four underlying currency pairs. The Dollar Index will be updated on a real-time basis beginning at 6:15 p.m. each day and ending at 5:00 p.m. (New York time) the following day from Sunday through Friday. If the value of a component's exchange rate is not available, the last known exchange rate will be used in the calculation.

The Exchange represents that values of the Dollar Index will be disseminated every 15 seconds during the Exchange's regular trading hours to market information vendors such as Bloomberg and Thomson Reuters.[8] In the event the Dollar Index ceases to be maintained or calculated, or its values are not disseminated every 15 seconds by a widely available source, the Exchange would not list any additional series for trading and would limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.[9]

As part of this proposal, the Exchange also is making a clarifying change to ISE Rule 2003(b) by replacing the word ''stocks'' with ''components'' because index options listed by the Exchange are no longer limited to having stocks as their underlying components; with this proposed rule change, the Exchange also will list options on indexes that have currencies as their underlying components.

Exercise and Settlement Value

Options on the Dollar Index will expire on the Saturday following the third Friday of the expiration month. Trading in expiring options on the Dollar Index will normally cease at

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68971 (February 22, 2013), 78 FR 13717 (''Notice'').

[4] The Commission previously approved the listing of FX Options on nineteen underlying foreign currencies. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[5] The term ''modified exchange rate'' means the price, for the sale of one foreign currency for another, quoted by various interbank foreign exchange participants, for immediate delivery (which generally means delivery two business days following the date on which the terms of such a sale are agreed upon), as reflected in the foreign currency price quotations reported by the foreign currency price quotation dissemination vendor selected by the Exchange, which is then modified by the Exchange with a modifier of 1, 10 or 100. *See* ISE Rule 2201(8).

[6] *See http://www.djindexes.com/mdsidx/downloads/fact_info/Dow_Jones_FXCM_Dollar_Index_Fact_Sheet.pdf.*

[7] *See* Notice, *supra* note 3, 78 FR at 13718.

[8] *See id.*

[9] *See id.*

12:00 p.m. (New York time) on the Friday preceding an expiration Saturday. The exercise and settlement value will be calculated using the WM Intra-day Spot rate corresponding to 12:00 p.m. New York time. The exercise-settlement amount is equal to the difference between the settlement value and the exercise price of the option, multiplied by $1. Exercise will result in the delivery of cash on the business day following expiration.

Contract Specifications

The Dollar Index is a foreign currency index, as defined in proposed Rule 2001(h). Options on the Dollar Index are European-style and cash-settled.[10] The Exchange's standard trading hours for FX Options (7:30 a.m. to 4:15 p.m., New York time) will also apply to the Dollar Index. The Exchange proposes to apply margin requirements for the purchase and sale of options on the Dollar Index that are identical to those applied for individual FX Options. Accordingly, per proposed ISE Rule 1202(e), the margin level required for trading options on the Dollar Index will be identical to the highest margin required for a component foreign currency as determined in accordance with ISE Rule 1202(d).

The trading of options on the Dollar Index will be subject to the trading halt procedures applicable to index options traded on the Exchange.[11] Options on the Dollar Index will be quoted and traded in U.S. dollars.[12] Accordingly, all Exchange and Options Clearing Corporation members will be able to accommodate trading, clearance, and settlement of the Dollar Index.

The Exchange proposes to list options on the Dollar Index that may expire at three-month intervals or in consecutive months. The Exchange also may list up to six expiration months at any one time. The Exchange proposes to set strike price intervals for options on the Dollar Index at minimum intervals of 2½ points, if the strike price is less than two hundred dollars ($200), in accordance with ISE Rule 2009(c)(1). Further, when new series of options on the Dollar Index with a new expiration date are opened for trading, or when additional series of options on the Dollar Index in an existing expiration date are opened for trading, as the current value of the Dollar Index moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series will be reasonably related to the current value of the underlying index at the time such series are first opened for trading.[13]

The Exchange may open for trading additional series of the same class of options on the Dollar Index as the current value of the underlying index moves substantially from the exercise price of those options on the Dollar Index that already have been opened for trading on the Exchange. The Exchange also may open for trading additional series of options on the Dollar Index that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. The Exchange will not consider Market makers trading for their own account when determining customer interest under this provision.[14]

The Exchange proposes to adopt the minimum tick size of $0.01 for options on the Dollar Index. Accordingly, the Exchange proposes to amend Supplementary Material .02 to ISE Rule 710 to permit options on the Dollar Index to be quoted and traded in one-cent increments. The Exchange believes that this trading increment will result in narrower spreads for options on the Dollar Index than if traditional trading increments are used because options on the individual foreign currency pairs that make up the Dollar Index are quoted in $0.01 increments.[15] The Exchange further believes that permitting the Dollar Index to be quoted and traded in one-cent increments will promote the adoption of trading FX-linked products on a listed and regulated market.[16]

For options on the Dollar Index, the Exchange proposes to establish aggregate position limits at 600,000 contracts on the same side of the market, provided no more than 300,000 of such contracts are in the nearest expiration month series. The Exchange notes that the proposed positions limits for the Dollar Index are equal to or lower than the position limits for individual FX options on the four currency pairs comprising the Dollar Index.[17] The same limits that apply to position limits will apply equally to exercise limits for options on the Dollar Index.[18]

The Exchange proposes to list options on the Dollar Index in the three consecutive near-term expiration months plus up to three successive expiration months in the March cycle. For example, consecutive expirations of January, February, March, plus June, September, and December expirations would be listed.[19]

The trading of options on the Dollar Index will be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. In addition, long-term option series having up to sixty months to expiration may be traded.[20] The trading of long-term options on the Dollar Index will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules. Further, pursuant to Supplementary Material .01 and .02 to ISE Rule 2009, the Exchange also may list Short Term Option Series and Quarterly Options Series, respectively, on the Dollar Index. Chapter 6 of the Exchange's rules (Doing Business with the Public) applies to trading in options on the Dollar Index.[21] Finally, a trading license issued by the Exchange will be required for all market makers to effect transactions as a market maker in the

[10] The Exchange will calculate a settlement value for the Dollar Index using the settlement values for the individual component currencies. The settlement value for each individual component currency is determined using the WM Intra-day Spot rate.

[11] *See* ISE Rule 2008(c).

[12] *See* ISE Rule 2009(a)(1).

[13] *See* ISE Rule 2009(c)(3). The term ''reasonably related to the current index value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value, as defined in ISE Rule 2009(c)(4).

[14] *See* ISE Rule 2009(c)(4).

[15] *See* Notice, *supra* note 3, 78 FR at 13719. *See also* Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007) (SR–ISE–2007–120).

[16] *See* Notice, *supra* note 3, 78 FR at 13719.

[17] *See id. See also* ISE Rule 2208.

[18] *See* ISE Rule 2007.

[19] *See* Rule 2009(a)(3).

[20] *See* Rule 2009(b)(1).

[21] Specifically, ISE Rules 608(a) and (b) prohibit Members from accepting a customer order to purchase or write an option, including options on the Dollar Index, unless such customer's account has been approved in writing by a designated Options Principal of the Member. Additionally, ISE's Rule 610 regarding suitability is designed to ensure that options, including options on the Dollar Index, are only sold to customers capable of evaluating and bearing the risks associated with trading in this instrument. Further, ISE Rule 611 permits members to exercise discretionary power with respect to trading options, including options on the Dollar Index, in a customer's account only if the Member has received prior written authorization from the customer and the account had been accepted in writing by a designated Options Principal. ISE Rule 611 also requires designated Options Principals or Representatives of a Member to approve and initial each discretionary order, including discretionary orders for options on the Dollar Index, on the day the discretionary order is entered. Finally, ISE Rule 609, Supervision of Accounts, Rule 612, Confirmation to Customers, and Rule 616, Delivery of Current Options Disclosure Documents and Prospectus, will also apply to trading in options on the Dollar Index.

Dollar Index in accordance with ISE Rule 2013.

Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for options traded on the Dollar Index, and intends to apply those same program procedures that it applies to the Exchange's other options products.[22] Further, options on the Dollar Index will be covered by the Exchange's existing surveillance system architecture and processes. Additionally, the Exchange will have access to information sharing resources in its capacity as a member of the Intermarket Surveillance Group. The Exchange represents that it has the necessary system capacity to support additional quotations and messages that will result from the listing and trading of options on the Dollar Index.[23]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of options on the Dollar Index will provide additional trading opportunities for investors in an index that reflects U.S. Dollar fluctuations against a basket of four highly liquid currencies (the euro, British pound, Japanese yen, and the Australian dollar). Investors will be able to trade this product through their existing broker-dealer on the Exchange and will be able to benefit from any investor safeguards incorporated into the Exchange's rules.

In addition, the Commission believes that allowing options on the Dollar Index to trade in penny ($0.01) increments is appropriate and consistent with the Act.[26] First, the spot currencies on which the Dollar Index is based are quoted in small increments, often less than a penny. Furthermore, there is a considerable amount of liquidity in the spot foreign currency markets for the individual currency pairs, and those markets generally exhibit low volatility both for the individual currency pairs as well as the Dollar Index. These factors support allowing options on the Dollar Index to be quoted and traded in penny increments. Quoting in penny increments may allow market makers to quote more competitively and with narrower spreads than they otherwise might be able to do with an artificially larger minimum increment, which could benefit investors.

The Exchange has represented that it has an adequate surveillance program in place for options on the Dollar Index and intends to apply the same procedures for surveillance that it applies to its other index options.[27] The options also will be subject to the trading halt procedures applicable to index options traded on the Exchange.[28] The Commission notes the Exchange's representations that it has the necessary systems capacity to support the trading of options on the Dollar Index.[29]

The proposed listing standards require the current value of the Dollar Index to be widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange. The Exchange, moreover, has represented that the total number of components in the Dollar Index will not decrease from the number of components in the Dollar Index at the time of its initial listing.[30]

The Commission notes that the Exchange proposes to apply its existing index rules regarding the listing of new series and additional series to options on the Dollar Index. Specifically, exercise prices will be required to be reasonably related to the value of the underlying index and generally must be within 30% of the current index value.[31]

In addition, the Exchange has stated that options on the Dollar Index would be subject to the same rules that govern all Exchange index options, including rules that are designed to protect public customer trading.[32]

The Commission believes that the Exchange's proposed position and exercise limits, strike price intervals, margin, and other aspects of the proposed rule change are appropriate and consistent with the Act. The Commission notes that the proposed position limits for the Dollar Index are equal to or lower than the position limits for individual foreign currency options on the four currency pairs comprising the Dollar Index.[33] In addition, the margin level required for trading options on the Dollar Index is identical to the highest margin required for a component foreign currency as determined in accordance with ISE Rule 1202(d).[34]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–ISE–2013–14), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09065 Filed 4–17–13; 8:45 am]

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[22] *See* Notice, *supra* note 3, 78 FR at 13720.

[23] *See id.*

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[25] 15 U.S.C. 78f(b)(5).

[26] Though options on the Dollar Index fall under the Exchange's index options rules and not its FX Options rules, the Commission notes that options on the Exchange's FX Options are quoted in penny increments on the Exchange.

[27] *See supra* note 22.

[28] *See supra* note 11.

[29] *See supra* note 23.

[30] *See supra* note 7.

[31] *See* ISE Rule 2009(c)(3) and (4).

[32] *See supra* note 21.

[33] *See supra* note 17. The same limits that apply to positions limits apply equally to exercise limits for options on the Dollar Index. *See supra* note 18.

[34] *See* ISE Rule 1202(e).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69368; File No. SR–BOX–2013–20]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Suspend Certain Provisions in Rule 7170 Regarding Obvious Errors During Limit Up-Limit Down States in Securities That Underlie Options Traded on the Exchange on a Pilot Basis

April 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend IM–7080–1 (Trading Conditions During Limit State or Straddle State) to permit the Exchange to suspend certain provisions in BOX Rule 7170 (Obvious and Catastrophic Errors) during limit up-limit down states in securities that underlie options traded on the Exchange on a pilot basis. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IM–7080–1 (Trading Conditions During Limit State or Straddle State) to permit the Exchange to suspend certain provisions in BOX Rule 7170 (Obvious and Catastrophic Errors) during limit up-limit down states in securities that underlie options traded on the Exchange on a pilot basis. This is a competitive filing that is based on a proposal recently submitted by International Securities Exchange, LLC (''ISE'') and approved by the Commission.[3]

Background

On May 31, 2012, the Commission approved the Plan to Address Extraordinary Market Volatility (the ''Plan''),[4] which establishes procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets.[5]

BOX is not a participant in the Plan because it does not trade NMS Stocks. However, BOX trades options contracts overlying NMS Stocks. Because options pricing models are highly dependent on the price of the underlying security and the ability of options traders to effect hedging transactions in the underlying security, the implementation of the Plan will impact the trading of options classes traded on the Exchange. Specifically, under the Plan, upper and lower price bands will be calculated based on a reference price for each NMS Stock.[6] When one side of the market for an individual security is outside the applicable price band, the national best bid or national best offer will be disseminated with a flag identifying it as non-executable (i.e., a ''Straddle State''). When the other side of the market reaches the applicable price band, such national best bid or offer will be disseminated with a flag identifying it as a Limit State Quotation.[7] If trading for a security does not exit a Limit State within 15 seconds, a Trading Pause will be declared by the Primary Listing Exchange.[8] The Trading Pause will last at least five minutes[9] and will end when the Primary Listing Exchange disseminates a Reopening Price.[10]

Proposal

When the national best bid (offer) for a security underlying an options class is non-executable, the ability for options market participants to purchase (sell) shares of the underlying security and the price at which they may be able to purchase (sell) shares will become uncertain, as there will be a lack of transparency regarding the availability of liquidity for the security.[11] This uncertainty will be factored into the options pricing models of market professionals, such as options market makers, which will likely result in wider spreads and less liquidity at the best bid and offer for the options class. Accordingly, during a Limit State, the Exchange will automatically reject all incoming orders that do not contain a limit price to protect them from being executed at prices that may be vastly inferior to the prices available immediately prior to or following a Limit State or Straddle State.[12] Such un-priced orders include Market Orders and BOX-Top Orders, which become market orders when the stop price is elected. The Exchange will also cancel any resting Market Orders and BOX-Top Orders.

The Exchange proposes to exclude transactions executed during a Limit State or Straddle State from certain provisions in BOX Rule 7170, on a one-year pilot basis. This will not include Rule 7170(e) and (f), which specify when a trade resulting from an erroneous print or quote in the underlying security may be adjusted or busted.

The remaining provisions in BOX Rule 7170 provide a process by which a transaction may be busted or adjusted

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[3] *See* Securities Exchange Act Release No. 69329 (April 5, 2013) (SR–ISE–2013–22).

[4] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Plan Approval Order'').

[5] *Id.* at 33511 (Preamble to the Plan).

[6] The reference price equals the arithmetic mean price of eligible reported transactions for the NMS Stock over the immediately preceding five-minute period. See Section I(T) of the Plan.

[7] *See* Section I(D) of the Plan. The Limit State will end when the entire size of all Limit State Quotations are executed or cancelled.

[8] *See* Section VII(A) of the Plan. The Primary Listing Exchange is the market on which an NMS Stock is listed. If an NMS Stock is listed on more than one market, the Primary Listing Exchange is the market on which the security has been listed the longest. *See* Section I(O) of the Plan. A trading pause may also be declared when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics. *See* Section VII(A)(2) of the Plan.

[9] A Trading Pause may last longer than 5 minutes if, for example, the Primary Market declares a Regulatory Halt, or if there is a significant order imbalance. See Section VII(B) of the Plan. If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a trading Pause and has not declared a Regulatory Halt, all trading centers may begin trading the security. *Id.*

[10] The Reopening Price is the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations. The Exchange notes that under BOX Rule IM–7080–11 (IM–7080–12 as of 4/7), trading on the Exchange is halted whenever trading in the underlying security has been paused by the primary listing market. Accordingly, the Exchange need not adopt any rule changes to address this aspect of the Plan.

[11] *See* Letter to Boris Ilyevsky, Managing Director, ISE, from Thomas Price, Managing Director, Securities Industry and Financial Markets Association, dated October 4, 2012 (''SIFMA Letter'').

[12] *See* Securities Exchange Act Release No. 69186 (March 20, 2013), 78 FR 18413 (March 26, 2013) (SR–BOX–2013–12).

when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under these provisions, the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order.[13] As discussed above, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the limit state. The Exchange believes these provisions would give rise to much uncertainty for market participants as there is no bright line definition of what the ''theoretical value'' should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Determining ''theoretical value'' in such a situation would be often times very subjective as opposed to an objective determination, giving rise to additional uncertainty and confusion for investors. Accordingly, the Exchange does not believe that the approach employed under Rule 7170, which by definition depends upon a reliable national best bid and offer in the option, is appropriate during a Limit State or Straddle State.[14]

After careful consideration, the Exchange believes the application of the current provisions in Rule 7170 would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and produce undesirable effects. Pursuant to Rule 7170, market participants have five minutes (in the case of a Market Maker) and 20 minutes (in the case of a non-Market Maker Options Participant) to notify the Exchange to review a transaction as an obvious error under 7170(g)(1) and Participants have until 8:30 a.m. the following day to request that the Exchange review a trade as a catastrophic error under Rule 7170(h)(1).[15] The Exchange believes that during periods of extraordinary volatility, the review period for transactions under the obvious error and catastrophic error provisions would allow market participants to re-evaluate a transaction that occurred during a Limit State or Straddle State at a later time, which is potentially unfair to other market participants and would discourage market participants from providing liquidity during Limit States or Straddle States. For example, 20 minutes after a transaction that occurs during extraordinary volatility that triggers a Limit State or Straddle State the market could look drastically different from a price and liquidity level The Exchange believes that market participants should not be able to benefit from the time frame to review their transactions in these situations. Suspending application of certain provisions in Rule 7170 would mitigate two of the undesirable aspects described above—(i) the moral hazard associated with granting a second look to trades that went against the market participant after market conditions have changed and (ii) gaming the obvious error rule to retroactively adjust market maker quotes by adjusting the execution price at a later time.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.''[16] Secondly, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the NBBO that it seems likely an error occurred. The requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, coupled with Exchange functionality that filters out orders that appear to be erroneous, serve to sharply reduce the incidence of errors arising from situations where, for example, a participant mistakenly enters an order to pay $20 for an option offered at $2. The Exchange also notes that pursuant to BOX Rule 7230(e), the Exchange may compensate Options Participants for losses resulting directly from the malfunction of the Exchange's systems, and that this protection is independent from the provisions in BOX Rule 7170. Accordingly, the Exchange believes it is appropriate to eliminate any potential protection applying the obvious error rule might provide during Limit and Straddle States, as its application may produce inequitable results.

The Exchange notes that Rule 15010 (Order Protection) will continue to apply during Limit and Straddle States. Accordingly, only orders identified as Intermarket Sweep Orders will trade through protected bids and offers during Limit and Straddle States, and as a result, the only trades that would potentially have been reviewed under Rule 7170 during Limit and Straddle States are those involving Intermarket Sweep Orders. The Exchange believes that this is an additional factor that supports its proposal to suspend certain provisions in Rule 7170 during Limit and Straddle States.

The Exchange proposes to review the operation of this proposal during the one-year pilot period from the operative date and analyze the impact of the Limit and Straddle States accordingly.[17] In this respect, the Exchange notes that its current obvious error rule does not contain a provision that permits the Exchange to review trades on its own motion. The Exchange believes that in normal market conditions, such a provision is not necessary and undermines the objective nature of the rule. However, during the pilot period, the Exchange will evaluate whether adopting such a provision for reviewing trades during Limit and Straddle states is necessary and appropriate.

Additionally, the Exchange represents that it will conduct its own analysis concerning the elimination of the obvious error rule during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. The Exchange notes that these proposed changes are consistent with the views of the Securities Industry and

[13] Rule 7170 provides that if there are no quotes from other options exchanges for comparison purposes, the theoretical price will be determined by designated personnel in the MRC. However, given that options market makers and other industry professionals will have difficulty pricing options during Limit States and Straddle States, the Exchange does not believe it would be reasonable for BOX personnel to derive theoretical prices to be applied to transactions executed during such unusual market conditions.

[14] *See* SIFMA Letter, *supra* note 11 (requesting that exchange obvious error rules that reference theoretical prices be reviewed to ensure that options exchange officials do not have the discretion to cancel executions of limit orders and stop limit orders during a limit or straddle state).

[15] For transactions in expiring options series that take place on expiration Friday, a Participant must notify MOC by 5:00 p.m. Eastern Time on that same day. *See* Rule 7170(h)(1).

[16] *See* Securities and Exchange Act Release No. 63241, 75 FR 69791 (November 15, 2010) (S7–03–10).

[17] During the pilot, the Exchange will provide the Commission with data regarding the how Limit and Straddle States affect the quality of the options market.

Financial Markets Association's (''SIFMA'') Listed Options Trading Committee.[18]

Specifically, the Exchange agrees to provide the following data to the Commission to help evaluate the impact of the proposal. At least two months prior to the end of the pilot period the Exchange shall provide an assessment that evaluates the statistical and economic impact of Straddle States on liquidity and market quality in the options markets; and assess whether the lack of obvious error rules in effect during the Straddle and Limit States is problematic. On a monthly basis, the Exchange shall provide both the Commission and public a dataset containing the data for each Straddle and Limit State in optionable stocks.[19]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[20] in general, and Section 6(b)(4) of the Act,[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from the provision of BOX Rule 7170. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* busted trades or adjusted prices) may not be appropriate given market conditions. This change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants five minutes (in the case of a Market Maker) and 20 minutes (in the case of a non-Market Maker Options Participant) to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. In this respect, the Exchange notes that by rejecting market orders and cancelling pending market orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of busting or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rule 7170 during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by ISE that was recently approved by the Commission.[22] The Exchange does not believe that the proposal will have any impact on competition among exchanges or market participants on the Exchange, as the proposal provides that transactions executed during such states will not be reviewed pursuant to provisions in Rule 7170.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6) thereunder.[24]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission to exclude transactions executed during a Limit State or Straddle State from certain provisions of the obvious error rules.[25] Further, the Commission notes that the Plan, to which these rules relate, was implemented on April 8, 2013. Therefore, the Commission designates the proposal operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[18] *Id.*

[19] The dataset will include the options for each underlying security that reaches a straddle state and meets the following conditions: the option is more than 20% in the money (strike price remains < 80% of last stock trade price for calls and strike price remains > 120% of last stock trade price for puts when the straddle or limit state is reached); the option has at least 2 trades during the straddle or limit state; and any of the top 10 options (as ranked by overall contract volume on that day) that meet the conditions above. For each of those options affected the data record will contain the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state. For activity on the Exchange the data record will contain the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle or limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's straddle or limit state compared to the last available option price as reported by OPRA before the start of the straddle or limit state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving straddle or limit state (or halt if applicable) is 30% away from the price before the start of the straddle or limit state.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4).

[22] *See supra* note 3.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] *See, e.g., supra* note 3.

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–BOX–2013–20 *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–BOX–2013–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–20 and should be submitted on or before May 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09098 Filed 4–17–13; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8278]

Issuance of a Presidential Permit Authorizing the State of Michigan to Construct, Connect, Operate, and Maintain at the Border of the United States a Bridge Linking Detroit, Michigan, and Windsor, Ontario

SUMMARY: The Department of State issued a Presidential Permit to the State of Michigan on April 11, 2013, authorizing the permitee to construct, connect, operate and maintain at the border of the United States a bridge linking Detroit, Michigan and Windsor, Ontario. In making this determination, the Department provided public notice of the proposed amendment (77 FR 7951, July 11, 2012), offered the opportunity for comment and consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT: Josh Rubin, Canada Border Affairs Officer, via email at *WHACanInternal@state.gov,* by phone at 202 647–2256 or by mail at Office of Canadian Affairs—Room 1329, Department of State, 2201 C St., NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

SUPPLEMENTARY INFORMATION: The following is the text of the issued permit:

By virtue of the authority vested in me as Under Secretary of State for Economic Growth, Energy, and the Environment, including those authorities under Executive Order 11423, 33 FR 11741, as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511, Executive Order 13284 of January 23, 2003, 68 FR 4075, and Executive Order 13337 of April 30, 2004, 69 FR 25299; and Department of State Delegation of Authority 118–2 of January 26, 2006; having considered the environmental effects of the proposed action consistent with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.) and other statutes relating to environmental concerns; having considered the proposed action consistent with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. 470f et seq.); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to the State of Michigan (hereinafter referred to as ''permittee '') to construct, connect, operate, and maintain a new international bridge (the New International Trade Crossing) between Detroit, Michigan, and Windsor, Ontario, Canada.

The term ''facilities'' as used in this permit means the bridge and any land, structure, or installations appurtenant thereto, at the location set forth in the Preferred Alternative in the ''Detroit River International Crossing (DRIC), Wayne County, Michigan, Final Environmental Impact Statement and Final Section 4(f) Evaluation'' by the U.S. Department of Transportation, Federal Highway Administration and Michigan Department of Transportation, dated November 21, 2008, the Record of Decision of the Federal Highway Administration dated January 14, 2009, and the application for a Presidential permit submitted by the State of Michigan dated June 18, 2012.

The term ''United States facilities'' as used in this permit means that part of the facilities in the United States.

This permit is subject to the following conditions:

Article 1. (1) The United States facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary's delegate or may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefore. The permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary's delegate.

(2) The construction, operation and maintenance of the United States facilities shall be in all material respects as described in the permitee's June 18, 2012, application for a Presidential Permit (the ''Application'').

Article 2. (1) The standards for, and the manner of, the construction, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of appropriate federal, state and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

(2) Prior to initiation of construction, the permittee shall obtain the approval of the United States Coast Guard (USCG) in conformity with Section 5 of the International Bridge Act of 1972 (33 U.S.C. 535c), 33 CFR 1.01–60 and Department of Homeland Security Delegation of Authority Number 0170.1.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the construction, operation, and maintenance of the United States facilities and with all applicable industrial codes. The permittee shall obtain all requisite permits from state and local government entities and relevant federal agencies.

Article 4. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary's delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State or the Secretary's delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 5. If, in the future, it should appear to the Secretaries of the Army or Homeland Security (or either Secretary's delegate) or the United States Coast Guard that any facilities or operations permitted hereunder cause unreasonable obstructions to the free navigation of any of the navigable waters of the United States, the permittee may be required, upon notice from the Secretary of the Army or the Secretary of Homeland Security (or either Secretary's delegate) or the United States Coast Guard, to remove or alter such facilities as are owned by it so as to render navigation through such waters free and unobstructed.

Article 6. The construction, connection, operation and maintenance of the United States facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the U.S. government, including but not limited to the Department of Homeland Security (DHS) and the Department of Transportation (DOT). The permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms, and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary's delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified in writing to the United States Department of State, including the submission of information identifying the transferee. This permit shall remain in force subject to all the conditions, permissions and requirements of this permit and any amendments thereto unless subsequently terminated or amended by the Secretary of State or the Secretary's delegate.

Article 9. (1) The permittee shall acquire such right -of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

(3) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

Article 10. (1) The permittee shall provide to the General Services Administration (GSA), at no cost to the federal government, a site that is adequate and acceptable to GSA on which to construct border station facilities at the United States terminal of the bridge. The permittee shall fully comply with all National Environmental Policy Act and National Historic Preservation Act mitigation provisions and stipulations for transfer of the site to the GSA.

(2) The permittee shall reach agreement with U.S. Customs and Border Protection (CBP) and other U.S. Federal Inspection Agencies on the provision of suitable facilities for officers to perform their duties. Such facilities shall meet the latest agency design standards and operational requirements including as necessary, but not limited to, inspection and office space, personnel parking and restrooms, an access road, kennels, and other operationally-required components.

Article 11. (1) The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation, and maintenance of the United States facilities, including those mitigation measures set forth in the ''Final Environmental Impact Statement and Final Section 4(f) Evaluation'' by the U.S. Department of Transportation, Federal Highway Administration and Michigan Department of Transportation, dated November 21, 2008, the Record of Decision of the Federal Highway Administration dated January 14, 2009, and any additional measures that may be required as a result of any reevaluation of the foregoing pursuant to 23 CFR 771.129(b).

(2) The permittee shall not undertake any change to the design of the bridge, or any construction activity, that would result in temporary or permanent obstructions affecting the natural level or flow of boundary waters before obtaining written confirmation from the Department of State that the requirements of the 1909 Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada, have been satisfied.

Article 12. The permittee shall file with the appropriate agencies of the United States Government such statements or reports under oath with respect to the United States facilities, and/or permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the U.S. government or its agencies.

Article 13. The permittee shall not begin construction until it has been informed that the Government of the United States and the Government of Canada have exchanged diplomatic notes confirming that both governments authorize for the commencement of such construction. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted, or discontinued.

Article 14. The Agencies consulted pursuant to Executive Order 11423, as amended, were notified on March 27, 2013 of the determination of the Under Secretary for Economic Growth, Energy, and the Environment that issuance of this permit would serve the national interest. Pursuant to Executive Order 11423, as amended, this permit shall issue on April 12, 2013 provided that none of the Agencies so notified objects before that date.

Article 15. This permit shall expire ten (10) years from the date of issuance in the event that the permittee has not commenced construction of the United States facilities by that deadline.

In witness whereof, I, Robert D. Hormats, Under Secretary of State for Economic Growth, Energy, and the Environment, have hereunto set my hand this 29 day of March 2013 in the City of Washington, District of Columbia. End Permit text.

Elizabeth L. Martinez,

Director, Office of Canadian Affairs, Bureau of Western Hemisphere Affairs, U.S. Department of State.

[FR Doc. 2013–09138 Filed 4–17–13; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aircraft Access to SWIM Working Group Meeting

Meeting Announcement: Thursday, May 16, 2013, From 1:00 p.m. to 4:00 p.m. FAA Headquarters, 800 Independence Ave. SW., Washington DC 20591, Bessie Coleman Room (Second Floor).

Open Meeting

The Federal Aviation Administration (FAA) invites federal employees, aviation professionals and all others interested in FAA NextGen technologies to attend and participate in an Aircraft Access to SWIM Working Group Meeting scheduled for Thursday, May 16, 2013 from 1:00 p.m. to 4:00 p.m. in the Bessie Coleman Room (Second Floor) at the FAA Headquarters Building in Washington DC To attend and follow security procedures, participants must register for the meeting by sending an email to *corey.ctr.muller@faa.gov* with the following information: Name, Company, Phone Number, U.S. Citizen (Y/N). RSVPs to Corey Muller are required by COB May 1, 2013.

Aircraft Access to SWIM

The FAA's Next Generation Air Transportation System (NextGen) program is a comprehensive modernization of our National Airspace System (NAS). It is intended to provide new aviation capabilities for both users and operators by improving aviation safety, system capacity and throughput.

The FAA's System Wide Information Management (SWIM) program is one of seven transformational programs of the NextGen portfolio. SWIM is designed to utilize a Service Oriented Architecture (SOA) to exchange aviation data and services without the restrictive, time consuming and expensive process of developing unique interfaces for the multitude of systems and equipment used by the NAS.

The Aircraft Access to SWIM (AAtS) initiative is the airborne component of the SWIM SOA. AAtS will allow aircraft to exchange operational information such as: weather, airport information, and other services during all phases of flight. This AAtS capability is significant in that near real time NAS data will now be available to support strategic and tactical traffic management and flight operations.

AAtS will provide aircraft with a means to obtain a common collection of aeronautical services provided from multiple sources. These sources include the FAA, DHS, NWS, and other information sources to create a shared aviation information environment. The AAtS initiative will utilize commercial air/ground network providers' infrastructure to exchange data between aircraft and the NAS ground facilities. The FAA in collaboration with industry users will define the set of operational and technical requirements that will be used to drive that infrastructure.

The AAtS initiative will facilitate common situational awareness between the aircraft flight crews and traffic managers, which will result in better decision making and more efficient NAS operations. AAtS will work to ensure safe, secure, dependable, and hassle-free travel; while reducing energy use, emissions and the impact of aviation on the environment.

Paul Fontaine,

Director, Advanced Concepts and Technology Development, Federal Aviation Administration.

[FR Doc. 2013–09137 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Surplus Property and Grant Assurance Obligations at Oroville Municipal Airport (OVE), Oroville, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 6.50 acres of airport property at the Oroville Municipal Airport (OVE), Oroville, California from all conditions contained in the Surplus Property Deed and Grant Assurances because the parcel of land is not needed for airport purposes. The land requested to be released is located outside of the airport fence along the southern boundary of the airport. The release will allow the City of Oroville (City) to sell the property at its fair market value, thereby benefiting the Airport and serving the interest of civil aviation. The City is also requesting a land-use change for approximately 13.62 acres of land adjacent to the 6.50 acres so it may be leased at its fair market value for non-aeronautical purposes to earn revenue for the airport. The proposed use will be compatible with the airport and will not interfere with the airport or its operation.

DATES: Comments must be received on or before May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Robert Lee, Airports Compliance Specialist, Federal Aviation Administration, San Francisco Airports District Office, **Federal Register** Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Art da Rosa, Director of Public Works, 1735 Montgomery Street, Oroville, CA 95965–4897.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The City of Oroville, California requested a release from Federal surplus property and grant assurance obligations for approximately 6.50 acres of airport land to allow for its sale and a land-use change for approximately 13.62 acres of airport land for long term leasing for non-aeronautical revenue generating purposes. The property was originally acquired pursuant to the Surplus Property Act of 1944 and was deeded to the City of Oroville on May 9, 1947. The parcels of land are located south of the airfield, outside of the airport fence line; and along the southern perimeter of the Airport near Larkin Road.

The City of Oroville will sell the 6.50 acres of property at fair market value and lease 13.62 acres of undeveloped airport land for fair market rental value for non-aeronautical revenue producing purposes.

The sales proceeds and rental income will be devoted to airport operations and capital projects. The reuse of the property will not interfere with the airport or its operation; thereby serve the interests of civil aviation.

Issued in Brisbane, California, on April 11, 2013.

Robin K. Hunt,

Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2013–09141 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0045]

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

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

ACTION: Notice of proposed extension, without change, of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget (''OMB''). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before June 17, 2013.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document 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, 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., 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, please be sure to mention the docket number of this document and cite OMB Clearance No. 2127–0609, ''Criminal Penalty Safe Harbor Provision.''

You may call the Docket at 202–366–9322.

Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act discussion below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: For questions please contact Mr. John Piazza in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366–9511. Please identify the relevant collection of information by referring to OMB Clearance Number 2127–0609 ''Criminal Penalty Safe Harbor Provision.''

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must 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 regulations (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; and

(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 public comment on the following proposed extension, without change, of a currently approved collection of information:

Criminal Penalty Safe Harbor Provision

Type of Request—Extension, without change, of a currently approved collection.

OMB Clearance Number—2127–0609.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Each person seeking safe harbor protection from criminal penalties under 49 U.S.C. 30170 related to an improper report or failure to report is required to submit the following information to NHTSA: (1) A signed and dated document that identifies (a) each previous improper report and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought and (b) the specific predicate under which the improper or omitted report should have been provided; and (2) the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted to NHTSA or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA. *See* 49 U.S.C. 30170(a)(2) *and* 49 CFR 578.7. *See also,* 66 FR 38380 (July 24, 2001) (safe harbor final rule) *and* 65 FR 81414 (Dec. 26, 2000) (safe harbor interim final rule).

Description of the Need for the Information and Use of the Information—This information collection was mandated by Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation Act, codified at 49 U.S.C. 30170(a)(2). The information collected will provide NHTSA with information the agency should have received previously and will also promptly provide the agency with correct information to do its analyses, such as, for example, conducting tests or drawing conclusions about possible safety-related defects. NHTSA anticipates using this information to help it to accomplish its statutory assignment of identifying safety-related defects in motor vehicles and motor vehicle equipment and, when appropriate, seeking safety recalls.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to any person who seeks a ''safe harbor'' from potential criminal liability for knowingly and willfully acting with the specific intention of misleading the Secretary by an act or omission that violates section 1001 of title 18 with respect to the reporting requirements of 49 U.S.C. 30166, regarding a safety-related defect in motor vehicles or motor vehicle equipment that caused death or serious bodily injury to an individual. Thus, the collection of information applies to the manufacturers, and any officers or employees thereof, who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

We believe that there will be very few criminal prosecutions under section 30170, given its elements. Since the safe harbor related rule has been in place, the agency has not received any reports. Accordingly, it is not likely to be a substantial motivating force for a submission of a proper report. We estimate that no more than one such person a year would invoke this new collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting from the Collection of Information—2 hours.

As stated before, we estimate that no more than one person a year would be subject to this collection of information. Incrementally, we estimate that on average it will take no longer than two hours for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of two hours.

Since nothing in the rule requires those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.95.

Issued on: April 11, 2013.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2013–09140 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 11:00 a.m. to 12:00 p.m. (EDT) on Thursday, May 23, 2013 at the SLSDC's Administration Building, 180 Andrews Street, Massena, New York 13662. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Acting Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, May 17, 2013, Anita K. Blackman, Senior Advisor to the Administrator, Saint Lawrence Seaway Development Corporation, Suite W32–300, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on April 15, 2013.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 2013–09157 Filed 4–17–13; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35730]

Ballard Terminal Railroad Company, L.L.C.—Lease Exemption—Line of Eastside Community Rail, LLC

Ballard Terminal Railroad Company, L.L.C. (Ballard), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Eastside Community Rail, LLC (ECRR) and to operate a 14.45-mile line of railroad between milepost 23.8 in Woodinville, Wash., and milepost 38.25 in Snohomish, Wash. (the Line).[1] Ballard states that it currently operates the Line under an agency relationship/interim operating agreement with ECRR.

Ballard has certified that its projected annual revenue as a result of this transaction will not result in Ballard's becoming a Class II or Class I rail carrier, and that its projected annual revenue will not exceed $5 million.

The transaction is expected to be consummated on or after May 2, 2013, the effective date of the exemption (30 days after the notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by April 25, 2013 (at least seven days before the exemption becomes effective).

[1] Concurrently with the verified notice of exemption, Ballard submitted two petitions concerning an adjacent segment between milepost 23.8 in Woodinville and milepost 12.6 in Bellevue, Wash. (the adjacent segment), currently owned by the City of Kirkland and the Port of Seattle in King County, Wash. Specifically, in Docket No. AB 6 (Sub-No. 465X), Ballard asks the Board to partially vacate the Notice of Interim Trail Use or Abandonment (NITU) issued by the Board for the adjacent segment in *BNSF Railway Co.—Abandonment Exemption—In King County, Wash.,* AB 6 (Sub-No. 465X) (STB served Nov. 28, 2008). Also, in Docket No. FD 35731, Ballard has filed a petition for exemption pursuant to 49 U.S.C. 10502 to acquire the residual common carrier rights and obligations, including the right to reinstitute rail service, over the adjacent segment. Ballard seeks to acquire the physical trackage assets of the adjacent segment and to resume providing common carrier rail service over this trackage. These filings will be addressed by the Board in subsequent decisions.

An original and 10 copies of all pleadings, referring to Docket No. FD 35730, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Myles L. Tobin, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: April 12, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–09218 Filed 4–17–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated Global Terrorist Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one (1) individual, whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, from the list of Specially Designated Nationals and Blocked Persons (''SDN List'').

DATES: The removal of this individual from the SDN List is effective as of April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

Individual

1. UMAR, Madhat Mursi Al-Sayyid; DOB 19 Oct 1953; POB Alexandria, Egypt; nationality Egypt (individual) [SDGT].

The removal of this individual name from the SDN List is effective as of April 11, 2013. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: April 11, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–09119 Filed 4–17–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplemental Identification Information for Two (2) Individuals Designated Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing supplemental information for the names of two (2) individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The publishing of updated identification information by the Director of OFAC of these two (2) individuals in this notice, pursuant is effective on April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose 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; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland

Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On April 11, 2013 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, supplemented the identification information for two (2) individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The supplementation identification information for the individuals is as follows:

Individuals

1. AHMAD, Farhad Kanabi (a.k.a. HAMAWANDI, Kawa; a.k.a. OMAR ACHMED, Kaua), Lochhamer Str. 115, Munich 81477, Germany; Iraq; DOB 01 Jul 1971; POB Arbil, Iraq; nationality Iraq; Travel Document Number A0139243 (Germany) (individual) [SDGT].

2. HUSSEIN, Mazen Ali (a.k.a. SALAH MUHAMAD, Issa), Branderstrasse 28, Augsburg 86154, Germany; Hauzenberg 94051, Germany; DOB 01 Jan 1982; alt. DOB 01 Jan 1980; POB Baghdad, Iraq; nationality Iraq; Travel Document Number A0144378 (Germany) (individual) [SDGT].

Dated: April 11, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–09120 Filed 4–17–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Special Medical Advisory Group will meet on May 1, 2013, in Room 830 at VA Central Office, 810 Vermont Avenue NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on VA and Department of Defense Collaboration; the Executive Order to Improve Access to Mental Health Services for Veterans, Service Members and Their Families; VA's Approach to End of Life Care; an Update on the National Academic Affiliations Council; and an annual ethics briefing for Committee members.

No time will be allocated for receiving oral presentations from the public. However, members of the public may submit written statements for review by the Committee to Jennifer Adams, Department of Veterans Affairs, Office of the Principal Deputy Under Secretary for Health (10A), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Jennifer.adams@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Adams at (202) 461–6515 or by email.

Dated: April 12, 2013.

By Direction of the Secretary:

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–09072 Filed 4–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on May 7–8, 2013, in Winchester B Meeting Room at the Holiday Inn Saint Louis-South I–55, 4234 Butler Hill, St. Louis, MO, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits.

On May 7, the Committee will receive updates on National Cemetery Administrations issues. On the morning of May 8, the Committee will tour the Jefferson Barracks National Cemetery, 2900 Sheridan Road, St. Louis, MO. In the afternoon, the Committee will reconvene at the Conference Center and discuss Committee recommendations, future meeting sites, and potential agenda topics at future meetings.

Time will be allocated for receiving public comments at 1 p.m. on both days. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

Members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Michael Nacincik, Designated Federal Officer, Department of Veterans Affairs, National Cemetery Administration (43A2), 810 Vermont Avenue NW., Washington, DC 20420, or by email at *michael.n@va.gov.* In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent. Any member of the public wishing to attend the meeting should contact Mr. Nacincik at (202) 632–8035.

Dated: April 12, 2013.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–09090 Filed 4–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation will meet on April 25–26, 2013, in Room 800 at the

United States Access Board, 1331 F Street NW., Washington, DC. The sessions will begin at 8 a.m. and end at 5 p.m. on both days. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Nancy Copeland, Acting Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *nancy.copeland@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mrs. Copeland at (202) 461–9685.

Dated: April 12, 2013.

By Direction of the Secretary:

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–09064 Filed 4–17–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Thursday,
No. 75 April 18, 2013

Part II

Department of Energy

10 CFR Part 431
Energy Conservation Program: Energy Conservation Standards for Distribution Transformers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0048]

RIN 1904–AC04

Energy Conservation Program: Energy Conservation Standards for Distribution Transformers

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

ACTION: 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 distribution transformers. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE is adopting more-stringent energy conservation standards for distribution transformers. It has determined that the amended energy conservation standards for this equipment would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is June 17, 2013. Compliance with the amended standards established for distribution transformers in this final rule is required as of January 1, 2016.

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-STD-0048.* The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

James Raba, 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) 586–8654. Email: *Distribution_Transformers@ee.doe.gov.*

Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of the Final Rule and Its Benefits

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. Part C of Title III of EPCA (42 U.S.C. 6311–6317) established a similar program for ''Certain Industrial Equipment,'' including distribution transformers.[1] Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain equipment, such as distribution transformers, 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), 6316(a)) Furthermore, any new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B), 6316(a)) In accordance with these and other statutory provisions addressed in this rulemaking, DOE is adopting amended energy conservation standards for distribution transformers. The amended standards are summarized in Table I.1 through Table I.3. Table I.4 shows the mapping of trial standard levels (TSLs) to energy efficiency levels (ELs),[2] and Table I.5 through Table I.8 show the standards in terms of minimum electrical efficiency. These amended standards apply to all equipment that is listed in Table I.1 and manufactured in, or imported into, the United States on or after January 1, 2016. As discussed in section IV.C.8 of this preamble, any distribution transformer having a kilovolt-ampere (kVA) rating falling between the kVA ratings shown in the tables shall meet a minimum energy efficiency level calculated by a linear interpolation of the minimum efficiency requirements of the kVA ratings immediately above and below that rating.[3]

For the reasons discussed in this preamble, particularly in Section V, DOE is adopting TSL 1 for liquid-immersed distribution transformers. DOE acknowledges the input of various stakeholders in support of a more stringent energy conservation standard for liquid-immersed distribution transformers. DOE notes that the potential for significant disruption in the steel supply market at higher efficiency levels was a key element in adopting TSL 1 in this rulemaking. DOE will monitor the steel and liquid-immersed distribution transformer markets and by no later than 2016, determine whether interim changes to market conditions, particularly the supply chain for amorphous steel, justify re-evaluating the efficiency standards adopted in today's rulemaking.

Although DOE proposed TSL 1 for low-voltage dry-type distribution transformers, DOE is adopting in this final rule TSL 2 for such transformers for the reasons discussed in greater detail in Section IV.I.5.B. DOE acknowledges that various stakeholders

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were redesignated as Parts A and A–1, respectively.

[2] A detailed description of the mapping of trial standard level to energy efficiency levels can be found in the Technical Support Document, chapter 10 section 10.2.2.3.

[3] kVA, an abbreviation for kilovolt-ampere, is a capacity metric used by industry to classify transformers. A transformer's kVA rating represents its output power when it is fully loaded (*i.e.,* 100 percent).

argued that concerns regarding small manufacturers should not be a barrier to adopting TSL 3 because small manufacturers have the option of either sourcing cores from third parties or investing in mitering machines. DOE will monitor the low-voltage dry-type distribution transformer market, and by no later than 2016, determine whether market conditions justify re-evaluating the efficiency standards adopted in today's rulemaking.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

[Compliance starting January 1, 2016]

Equipment classes	Design line	Type	Phase count	BIL*	Adopted TSL
1	1, 2 and 3	Liquid-immersed	1	All	1
2	4 and 5	Liquid-immersed	3	All	1

* BIL means "basic impulse insulation level" and measures how resistant a transformer's insulation is to large voltage transients.

TABLE I.2—ENERGY CONSERVATION STANDARDS FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

[Compliance starting January 1, 2016]

Equipment class	Design line	Type	Phase count	BIL*	Adopted TSL
3	6	Low-voltage dry-type	1	≤ 10 kV	2
4	7 and 8	Low-voltage dry-type	3	≤ 10 kV	2

* BIL means "basic impulse insulation level" and measures how resistant a transformer's insulation is to large voltage transients.

TABLE I.3—ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

[Compliance starting January 1, 2016]

Equipment class	Design line	Type	Phase count	BIL*	Adopted TSL
5	9 and 10	Medium-voltage dry-type	1	25–45 kV	2
6	9 and 10	Medium-voltage dry-type	3	25–45 kV	2
7	11 and 12	Medium-voltage dry-type	1	46–95 kV	2
8	11 and 12	Medium-voltage dry-type	3	46–95 kV	2
9	13A and 13B	Medium-voltage dry-type	1	≥96 kV	2
10	13A and 13B	Medium-voltage dry-type	3	≥96 kV	2

* BIL means "basic impulse insulation level" and measures how resistant a transformer's insulation is to large voltage transients.

TABLE I.4—TRIAL STANDARD LEVEL TO ENERGY EFFICIENCY LEVEL MAPPING FOR DISTRIBUTION TRANSFORMER ENERGY CONSERVATION STANDARDS

Type	Design line	Phase count	TSL	Energy efficiency level	Efficiency (%)
Liquid-immersed	1	1	1	1 (0.4 actual)*	99.11
	2	1		Base (0.5 actual)*	98.95
	3	1		1 (1.1 actual)*	99.49
	4	3		1	99.16
	5	3		1	99.48
Low-voltage dry-type	6	1	2	Base	98.00
	7	3		3	98.60
	8	3		2	99.02
Medium-voltage dry-type	9	3	2	1	98.93
	10	3		2	99.37
	11	3		1	98.81
	12	3		2	99.30
	13A	3		1	98.69
	13B	3		2	99.28

* Because of scaling, actual efficiency values unavoidably differ from nominal EL values.

TABLE I.5—ELECTRICAL EFFICIENCIES FOR ALL LIQUID-IMMERSED DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES

[Compliance starting January 1, 2016]

Equipment Class 1		Equipment Class 2	
kVA	%	kVA	%
Standards by kVA and Equipment Class			
10	98.70	15	98.65

TABLE I.5—ELECTRICAL EFFICIENCIES FOR ALL LIQUID-IMMERSED DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES—Continued

[Compliance starting January 1, 2016]

Equipment Class 1		Equipment Class 2	
kVA	%	kVA	%
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1,000	99.43
667	99.52	1,500	99.48
833	99.55	2,000	99.51
		2,500	99.53

TABLE I.6—ELECTRICAL EFFICIENCIES FOR ALL LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES

[Compliance starting January 1, 2016]

Equipment Class 3		Equipment Class 4	
kVA	%	kVA	%
Standards by kVA and Equipment Class			
15	97.70	15	97.89
25	98.00	30	98.23
37.5	98.20	45	98.40
50	98.30	75	98.60
75	98.50	112.5	98.74
100	98.60	150	98.83
167	98.70	225	98.94
250	98.80	300	99.02
333	98.90	500	99.14
		750	99.23
		1,000	99.28

TABLE I.7—ELECTRICAL EFFICIENCIES FOR ALL MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES

[Compliance starting January 1, 2016]

Equipment Class 5		Equipment Class 6		Equipment Class 7		Equipment Class 8		Equipment Class 9		Equipment Class 10	
kVA	%	kVA	%	kVA	%	kVA	%	kVA	%	kVA	%
Standards by kVA and Equipment Class											
15	98.10	15	97.50	15	97.86	15	97.18				
25	98.33	30	97.90	25	98.12	30	97.63				
37.5	98.49	45	98.10	37.5	98.30	45	97.86				
50	98.60	75	98.33	50	98.42	75	98.13				
75	98.73	112.5	98.52	75	98.57	112.5	98.36	75	98.53		
100	98.82	150	98.65	100	98.67	150	98.51	100	98.63		
167	98.96	225	98.82	167	98.83	225	98.69	167	98.80	225	98.57
250	99.07	300	98.93	250	98.95	300	98.81	250	98.91	300	98.69
333	99.14	500	99.09	333	99.03	500	98.99	333	98.99	500	98.89
500	99.22	750	99.21	500	99.12	750	99.12	500	99.09	750	99.02
667	99.27	1,000	99.28	667	99.18	1,000	99.20	667	99.15	1,000	99.11
833	99.31	1,500	99.37	833	99.23	1,500	99.30	833	99.20	1,500	99.21
		2,000	99.43			2,000	99.36			2,000	99.28
		2,500	99.47			2,500	99.41			2,500	99.33

A. Benefits and Costs to Customers [4]

Table I.8 summarizes DOE's evaluation of the economic impacts of today's standards on customers who purchase distribution transformers, as measured by the average life-cycle cost (LCC) savings and the median payback period (PBP). DOE measures the impacts of standards relative to a base case that reflects likely trends in the distribution transformer market in the absence of amended standards. The base case predominantly consists of products at the baseline efficiency levels evaluated for each representative unit, which correspond to the existing energy conservation standards for distribution transformers. (Throughout this document, ''distribution transformers'' are also referred to as simply ''transformers.'')

TABLE I.8—IMPACTS OF TODAY'S STANDARDS ON CUSTOMERS OF DISTRIBUTION TRANSFORMERS

Design line	Average LCC savings 2011$	Median payback period years
Liquid-Immersed		
1	72	18.2
2	66	5.9
3	2,753	8.6
4	967	7.0
5	4,289	6.3
Low-voltage dry-type **		
6	N/A *	N/A *
7	1,678	3.6
8	2,588	7.7
Medium-voltage dry-type		
9	787	2.6
10	4,455	8.6
11	996	10.6
12	6,790	8.5
13A	−27	16.1
13B	4,346	12.2

* No customers are impacted by today's standard because there is no change from the minimum efficiency standard for design line 6.

** See section IV.A.3.d for discussion of core construction technique.

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 to 2045). Using a real discount rate of 7.4 percent for liquid-immersed distribution transformers, 9 percent for medium-voltage dry-type distribution transformers, and 11.1 percent for low-voltage dry-type distribution transformers, DOE estimates that the INPV for manufacturers of liquid-immersed, medium-voltage dry-type, and low-voltage dry-type distribution transformers is $575.1 million, $68.7 million, and $237.6 million, respectively, in 2011$. Under the standards of today's rule, DOE expects that manufacturers of liquid-immersed units may lose as much as 8.4 percent of their INPV, which is approximately $48.2 million; medium-voltage manufacturers may lose as much as 4.2 percent of their INPV, which is approximately $2.9 million; and low-voltage manufacturers may lose as much as 4.7 percent of their INPV, which is approximately $11.1 million. Additionally, based on DOE's interviews with the manufacturers of distribution transformers, DOE does not expect any plant closings or significant loss of employment.

C. National Benefits

DOE's analyses indicate that today's standards would save a significant amount of energy. The lifetime savings for equipment purchased in the 30-year period that begins in the year of compliance with amended standards (2016–2045) amounts to 3.63 quads.

The cumulative net present value (NPV) of total customer costs and savings of today's standards for distribution transformers, in 2011$, ranges from $3.4 billion (at a 7-percent discount rate) to $12.9 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for equipment purchased in 2016–2045, discounted to 2012.

In addition, today's standards would have significant environmental benefits. The energy savings would result in cumulative emission reductions of 264.7 million metric tons (Mt) [5] of carbon dioxide (CO_2), 223.3.thousand tons of nitrogen oxides (NO_X), 182.9 thousand tons of sulfur dioxide (SO_2), and 0.6 ton of mercury (Hg).[6]

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 the net present monetary value of the CO_2 emissions reduction is between $0.80 billion and $13.31 billion, expressed in 2011$ and discounted to 2012. DOE also estimates the net present monetary value of the NO_X emissions reduction, expressed in 2011$ and discounted to 2012, is $93.2 million at a 7-percent discount rate and $234.1 million at a 3-percent discount rate.[7]

Table I.9 summarizes the national economic costs and benefits expected to result from today's standards for distribution transformers.

TABLE I.9—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF DISTRIBUTION TRANSFORMER ENERGY CONSERVATION STANDARDS

Category	Present value billion 2011$	Discount rate %
Benefits		
Operating Cost Savings	6.30	7

[4] For purposes of this document, the ''consumers'' of distribution transformers are referred to as ''customers.'' Customers refer to electric utilities in the case of liquid-immersed transformers, and to utilities and building owners in the case of dry-type transformers.

[5] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are presented in short tons.

[6] DOE calculated emissions reductions relative to the Annual Energy Outlook (AEO) 2011 Reference case, which incorporated projected effects of all emissions regulations promulgated as of January 31, 2011, including the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)). Subsequent regulations, including the CAIR replacement rule, the Cross-State Air Pollution Rule (76 FR 48208 (August 8, 2011)), do not appear in the projection.

[7] DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it monetizes Hg in its rulemakings.

TABLE I.9—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF DISTRIBUTION TRANSFORMER ENERGY CONSERVATION STANDARDS—Continued

Category	Present value billion 2011$	Discount rate %
	18.2	3
CO_2 reduction monetized value ($4.9/t case) *	0.80	5
CO_2 reduction monetized value ($22.3/t case) *	4.38	3
CO_2 reduction monetized value ($36.5/t case) *	7.51	2.5
CO_2 reduction monetized value ($67.6/t case) *	13.31	3
NO_X reduction monetized value ($2,591/ton) **	0.09	7
	0.23	3
Total benefits †	10.77	7
	22.8	3
Costs		
Incremental installed costs	2.89	7
	5.22	3
Net Benefits		
Including CO_2 and NO_X reduction monetized value	7.88	7
	17.6	3

* The CO_2 values represent global monetized values of the SCC in 2011$ in 2011 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 SCC time series used by DOE incorporate an escalation factor.

** 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 series corresponding to SCC value of $22.3/t.

The benefits and costs of today's standards, for equipment sold in 2016–2045, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from customer operation of equipment that meets today's standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing customer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[8]

Although combining the values of operating cost savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, whereas 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 using different methods that employ different time frames for analysis. The national operating cost savings is measured for the lifetime of distribution transformers shipped in 2016–2045. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. Those impacts continue well beyond 2100.

Estimates of annualized benefits and costs of today's standards are shown in Table I.10. The results under the primary estimate are as follows. (All monetary values below are expressed in 2011$.) 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 2011), the cost of the standards in today's rule is $266 million per year in increased equipment costs, while the benefits are $581 million per year in reduced equipment operating costs, $237 million in CO_2 reductions, and $8.60 million in reduced NO_X emissions. In this case, the net benefit amounts to $561 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 2011), the cost of the standards in today's rule is $282 million per year in increased equipment costs, while the benefits are $983 million per year in reduced operating costs, $237 million in CO_2 reductions, and $12.67 million in reduced NO_X emissions. In this case, the net benefit amounts to $950 million per year.

[8] 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 three and seven 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.10. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2016 through 2045) 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 is a steady stream of payments.

TABLE I.10—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR DISTRIBUTION TRANSFORMERS SOLD IN 2016–2045

	Discount rate %	Million 2011$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating cost savings	7	581	559	590.
	3	983	930	1003.
CO_2 reduction monetized value ($4.9/t case) **	5	57.7	57.7	57.7.
CO_2 reduction monetized value ($22.3/t case) **	3	237	237	237.
CO_2 reduction monetized value ($36.5/t case) **	2.5	377	377	377.
CO_2 reduction monetized value ($67.6/t case) **	3	721	721	721.
NO_X reduction monetized value ($2,591/ton) **	7	8.60	8.60	8.60.
	3	12.67	12.67	12.67.
Total benefits†	7% plus CO_2 range	648 to 1311	625 to 1288	656 to 1319.
	7	827	805	836.
	3% plus CO_2 range	1053 to 1716	1000 to 1663	1074 to 1737.
	3	1233	1179	1253.
Costs				
Incremental equipment costs	7	266	300	257.
	3	282	325	271.
Net Benefits				
Total†	7% plus CO_2 range	381 to 1044	325 to 988	400 to 1063.
	7	561	504	579.
	3% plus CO_2 range	771 to 1434	675 to 1338	803 to 1466.
	3%	950	854	982.

* This table presents the annualized costs and benefits associated with transformers shipped in 2016–2045. These results include benefits to customers that accrue after 2045 from equipment purchased in 2016–2045. Costs incurred by manufacturers, some of which may be incurred in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits estimates utilize projections of energy prices from the *AEO2012* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental equipment costs reflect a constant equipment price trend in the Primary Estimate, an increasing price trend in the Low Benefits Estimate, and a declining price trend in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.2.

** The CO_2 values represent global monetized values of the SCC, in 2011$, in 2011 under several scenarios. The values of $4.9, $22.3, and $36.5 per metric ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6/t represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X (in 2011$) 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 series corresponding to SCC value of $22.3/t. In the rows labeled "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, consumer LCC savings, positive NPV of customer benefit, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of this equipment). 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.

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 today's amended standards.

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.'' Part C of Title III of EPCA (42 U.S.C. 6311–6317) established a similar program for ''Certain Industrial Equipment,'' including distribution transformers.[9] The Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA and directed the Department of Energy to prescribe energy conservation standards for those distribution transformers for which DOE determines such standards would be technologically feasible, economically justified, and would result in significant energy savings. (42 U.S.C. 6317(a)) The Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to establish energy conservation standards for low-voltage dry-type distribution transformers.[10] (42 U.S.C. 6295(y))

[9] For editorial reasons, upon codification in the U.S. Code, Parts B and C were redesignated as Parts A and A–1, respectively.

[10] EPACT 2005 established that the efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2007 shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the ''Guide for Determining Energy Efficiency for Distribution

For those distribution transformers for which DOE determines that energy conservation standards are warranted, the DOE test procedures must be the ''Standard Test Method for Measuring the Energy Consumption of Distribution Transformers'' prescribed by the National Electrical Manufacturers Association (NEMA TP 2–1998), subject to review and revision by the Secretary of Energy in accordance with certain criteria and conditions. (42 U.S.C. 6293(b)(10), 6314(a)(2)–(3) and 6317(a)(1)) Manufacturers of such covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those types of equipment. (42 U.S.C. 6314(d)) The DOE test procedures for distribution transformers appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart K, appendix A.

DOE is required to follow certain statutory criteria for prescribing amended standards for covered equipment. As indicated above, any amended standard for covered equipment 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) and 6316(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) and 6316(a)) Moreover, DOE may not prescribe a standard: (1) For certain equipment, including distribution transformers, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the amended standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3) and 6316(a)) 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) and 6316(a)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and customers of the equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment 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 equipment 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) and 6316(a))

EPCA, as codified, also 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) and 6316(a)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that 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) and 6316(a))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the customer of purchasing equipment 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 customer 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) and 6316(a).

Additionally, 42 U.S.C. 6295(q)(1), as applied to covered equipment under 42 U.S.C. 6316(a), specifies requirements when promulgating a standard for a type or class of covered equipment that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of covered equipment that has the same function or intended use if DOE determines that equipment within such group: (A) Consumes a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) has a capacity or other performance-related feature which other equipment within such type (or class) does not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1) and 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the customer 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) and 6316(a))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c) and 6316(a)) 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)).

DOE has also reviewed this regulation pursuant to Executive Order (EO) 13563, issued on January 18, 2011 (76 FR 3281, January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 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

Transformers'' published by the National Electrical Manufacturers Association (NEMA TP 1–2002).

information upon which choices can be made by the public.

DOE emphasizes as well that EO 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 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. Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency standard adopted herein by DOE achieves maximum net benefits.

B. Background

1. Current Standards

On August 8, 2005, EPACT 2005 amended EPCA to establish energy conservation standards for low-voltage dry-type distribution transformers (LVDTs).[11] (EPACT 2005, Section 135(c); 42 U.S.C. 6295(y)) The standard levels for low-voltage dry-type distribution transformers appear in Table II.1. See Table I.6 above for today's amended LVDT standards.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Single-phase		Three-phase	
kVA	Efficiency %	kVA	Efficiency %
15	97.7	15	97.0
25	98.0	30	97.5
37.5	98.2	45	97.7
50	98.3	75	98.0
75	98.5	112.5	98.2
100	98.6	150	98.3
167	98.7	225	98.5
250	98.8	300	98.6
333	98.9	500	98.7
		750	98.8
		1,000	98.9

Note: Efficiencies are determined at the following reference conditions: (1) for no-load losses, at the temperature of 20 °C, and (2) for load losses, at the temperature of 75 °C and 35% of nameplate load.

DOE incorporated these standards into its regulations, along with the standards for several other types of products and equipment, in a final rule published on October 18, 2005. 70 FR 60407, 60416–60417. These standards appear at 10 CFR 431.196(a).

On October 12, 2007, DOE published a final rule that established energy conservation standards for liquid-immersed distribution transformers and medium-voltage dry-type distribution transformers, which are shown in Table II.2 and Table II.3, respectively. 72 FR 58190, 58239–40. These standards are codified at 10 CFR 431.196(b) and (c). See Tables I.5 and I.7 above for today's amended liquid-immersed and medium-voltage dry-type (MVDT) standards.

TABLE II.2—FEDERAL ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Single-phase		Three-phase	
kVA	Efficiency %	kVA	Efficiency %
10	98.62	15	98.36
15	98.76	30	98.62
25	98.91	45	98.76
37.5	99.01	75	98.91
50	99.08	112.5	99.01
75	99.17	150	99.08
100	99.23	225	99.17
167	99.25	300	99.23
250	99.32	500	99.25
333	99.36	750	99.32
500	99.42	1,000	99.36
667	99.46	1,500	99.42
833	99.49	2,000	99.46
	....	2,500	99.49

Note: All efficiency values are at 50% of nameplate-rated load, determined according to the DOE test-procedure. 10 CFR part 431, subpart K, appendix A.

[11] EPACT 2005 established that the efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2007, shall be the Class I Efficiency Levels for distribution transformers specified in Table 4–2 of the ''Guide for Determining Energy Efficiency for Distribution Transformers'' published by the National Electrical Manufacturers Association (NEMA TP 1–2002).

TABLE II.3—FEDERAL ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

kVA	Single-phase			kVA	Three-phase		
	BIL*				BIL		
	20–45 kV	46–95 kV	≥96 kV		20–45 kV	46–95 kV	≥96 kV
	Efficiency %	Efficiency %	Efficiency %		Efficiency %	Efficiency %	Efficiency %
15	98.10	97.86		15	97.50	97.18	
25	98.33	98.12		30	97.90	97.63	
37.5	98.49	98.30		45	98.10	97.86	
50	98.60	98.42		75	98.33	98.12	
75	98.73	98.57	98.53	112.5	98.49	98.30	
100	98.82	98.67	98.63	150	98.60	98.42	
167	98.96	98.83	98.80	225	98.73	98.57	98.53
250	99.07	98.95	98.91	300	98.82	98.67	98.63
333	99.14	99.03	98.99	500	98.96	98.83	98.80
500	99.22	99.12	99.09	750	99.07	98.95	98.91
667	99.27	99.18	99.15	1,000	99.14	99.03	98.99
833	99.31	99.23	99.20	1,500	99.22	99.12	99.09
				2,000	99.27	99.18	99.15
				2,500	99.31	99.23	99.20

* BIL means "basic impulse insulation level."

Note: All efficiency values are at 50% of nameplate rated load, determined according to the DOE test-procedure. 10 CFR part 431, subpart K, appendix A.

2. History of Standards Rulemaking for Distribution Transformers

In a notice published on October 22, 1997 (62 FR 54809), DOE stated that it had determined that energy conservation standards were warranted for electric distribution transformers, relying in part on two reports by DOE's Oak Ridge National Laboratory (ORNL). In 2000, DOE issued and took comment on its Framework Document for Distribution Transformer Energy Conservation Standards Rulemaking, describing its proposed approach for developing standards for distribution transformers, and held a public meeting to discuss the framework document. The document is available at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2006-STD-0099*.

On July 29, 2004, DOE published an advance notice of proposed rulemaking (ANOPR) for distribution transformer standards.[12] 69 FR 45375. In August 2005, DOE issued draft analyses on which it planned to base the standards for liquid-immersed and medium-voltage dry-type distribution transformers, along with supporting documentation.[13]

On April 27, 2006, DOE published its Final Rule on Test Procedures for Distribution Transformers. The rule: (1) established the procedure for sampling and testing distribution transformers so that manufacturers can make representations as to their efficiency, as well as establish that they comply with Federal standards; and (2) outlined the procedure the Department of Energy would follow should it initiate an enforcement action against a manufacturer. 71 FR 24972 (codified at 10 CFR 431.198).

On August 4, 2006, DOE published a NOPR in which it proposed energy conservation standards for distribution transformers (the 2006 NOPR). 71 FR 44355. Concurrently, DOE also issued a technical support document (TSD) that incorporated the analyses it had performed for the proposed rule.[14]

Some commenters asserted that DOE's proposed standards might adversely affect replacement of distribution transformers in certain space-constrained (e.g., vault) installations. In response, DOE issued a notice of data availability and request for comments on this and another issue. 72 FR 6186 (February 9, 2007) (the NODA). In the NODA, DOE sought comment on whether it should include in the LCC analysis potential costs related to size constraints of distribution transformers installed in vaults, and requested comments on linking energy efficiency levels for three-phase liquid-immersed units with those of single-phase units. 72 FR 6189. Based on comments on the 2006 NOPR and the NODA, DOE created new TSLs to address the treatment of three-phase units and single-phase units and incorporated increased installation costs for pole-mounted and vault transformers. In October 2007, DOE published a final rule that created the current energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers. 72 FR 58190 (October 12, 2007) (the 2007 Final Rule) (codified at 10 CFR 431.196(b)–(c)). The preamble to the rule included additional, detailed background information on the history of that rulemaking. 72 FR 58194–96.

After the publication of the 2007 final rule, certain parties filed petitions for review in the United States Courts of Appeals for the Second and Ninth Circuits, challenging the rule. Several additional parties were permitted to intervene in support of those petitions. (All of these parties are referred to below collectively as "petitioners.") The petitioners alleged that, in developing its energy conservation standards for distribution transformers, DOE did not comply with certain applicable provisions of EPCA and of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*) DOE and the petitioners subsequently entered into a settlement agreement to resolve the petitions. The settlement agreement outlined an expedited timeline for the Department of Energy to determine whether to amend the energy conservation standards for liquid-

[12] The ANOPR published in July 2004 is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0099-0069*.

[13] These analyses are available in the docket folder at: *http://www.regulations.gov/#!docketDetail;D=EERE-2006-STD-0099*.

[14] The NOPR TSD published in August 2006 is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0099-0140*.

immersed and medium-voltage dry-type distribution transformers. Under the original settlement agreement, DOE was required to publish by October 1, 2011, either a determination that the standards for those distribution transformers do not need to be amended or a NOPR that includes any new proposed standards and that meets all applicable requirements of EPCA and NEPA. Under an amended settlement agreement, the October 1, 2011, deadline for a DOE determination or proposed rule was extended to February 1, 2012. If DOE finds that amended standards are warranted, DOE agreed to publish a final rule containing such amended standards by October 1, 2012. Today's final rule satisfies the amended settlement agreement.

On March 2, 2011, DOE published in the **Federal Register** a notice of public meeting and availability of its preliminary TSD for the distribution transformer energy conservation standards rulemaking, wherein DOE discussed and received comments on issues such as equipment classes that DOE would analyze in consideration of amending the energy conservation standards, the analytical framework, models and tools it is using to evaluate potential standards, the results of its preliminary analysis, and potential standard levels. 76 FR 11396. The notice is available on the above-referenced DOE Web site. To expedite the rulemaking process, DOE began at the preliminary analysis stage because it believed that many of the same methodologies and data sources that were used during the 2007 final rule remain valid. On April 5, 2011, DOE held a public meeting to discuss the preliminary TSD. Representatives of manufacturers, trade associations, electric utilities, energy conservation organizations, Federal regulators, and other interested parties attended this meeting. In addition, other interested parties submitted written comments about the TSD addressing a range of issues. Those comments are discussed in the following sections of the final rule.

On July 29, 2011, DOE published in the **Federal Register** a notice of intent to establish a subcommittee under DOE's Energy Efficiency and Renewable Energy Advisory Committee (ERAC), in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act, to negotiate proposed Federal standards for the energy efficiency of medium-voltage dry-type and liquid-immersed distribution transformers. 76 FR 45471. Stakeholders strongly supported a consensual rulemaking effort. DOE decided that a negotiated rulemaking would result in a better-informed NOPR. On August 12, 2011, DOE published in the **Federal Register** a similar notice of intent to negotiate proposed Federal standards for the energy efficiency of low-voltage dry-type distribution transformers. 76 FR 50148. The purpose of both subcommittees was to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of distribution transformers.

The ERAC subcommittee for medium-voltage liquid-immersed, and dry-type distribution transformers consisted of representatives of parties, listed below, having a defined stake in the outcome of the proposed standards and included:

- ABB Inc.
- AK Steel Corporation
- American Council for an Energy-Efficient Economy
- American Public Power Association
- Appliance Standards Awareness Project
- ATI-Allegheny Ludlum
- Baltimore Gas and Electric
- Cooper Power Systems
- Earthjustice
- Edison Electric Institute
- Fayetteville Public Works Commission
- Federal Pacific Company
- Howard Industries Inc.
- LakeView Metals
- Efficiency and Renewables Advisory Committee member
- Metglas, Inc.
- National Electrical Manufacturers Association
- National Resources Defense Council
- National Rural Electric Cooperative Association
- Northwest Power and Conservation Council
- Pacific Gas and Electric Company
- Progress Energy
- Prolec-GE
- U.S. Department of Energy

The ERAC subcommittee for medium-voltage liquid-immersed, and dry-type distribution transformers held meetings in 2011 on September 15 through 16, October 12 through 13, November 8 through 9, and November 30 through December 1; the ERAC subcommittee also held public webinars on November 17 and December 14. The meetings were open to the public. During the September 15, 2011, meeting, the subcommittee agreed to its rules of procedure, ratified its schedule of the remaining meetings, and defined the procedural meaning of consensus. The subcommittee defined consensus as unanimous agreement from all present subcommittee members. Subcommittee members were allowed to abstain from voting for an efficiency level; in such cases their votes counted neither toward nor against the consensus.

DOE presented its draft engineering, life-cycle cost, and national impacts analysis and results. During the meetings of October 12 through 13, 2011, DOE presented its revised analysis and heard from subcommittee members on a number of topics. During the meetings on November 8 through 9, 2011, DOE presented its revised analysis, including life-cycle cost sensitivities based on excluding ZDMH and amorphous steel as core materials. During the meetings on November 30 through December 1, 2011, DOE presented its revised analysis based on 2011 core-material prices.

At the conclusion of the final meeting, subcommittee members presented their efficiency level recommendations. For medium-voltage liquid-immersed distribution transformers, the energy efficiency Advocates, represented by the Appliance Standards Awareness Project (ASAP), recommended efficiency level (also referred to as ''EL'') 2 for all design lines (also referred to as ''DLs''). The National Electrical Manufacturers Association (NEMA) and AK Steel recommended EL 1 for all DLs except for DL 2, for which no change from the current standard was recommended. Edison Electric Institute (EEI) and ATI Allegheny Ludlum recommended EL1 for DLs 1, 3, and 4 and no change from the current standard or a proposed standard of less than EL 1 for DLs 2 and 5. Therefore, the subcommittee did not arrive at consensus regarding proposed standard levels for medium-voltage liquid-immersed distribution transformers.

For medium-voltage dry-type distribution transformers, the subcommittee arrived at consensus and recommended a proposed standard of EL2 for DLs 11 and 12, from which the proposed standards for DLs 9, 10, 13A, and 13B would be scaled. Transcripts of the all subcommittee meetings (for all transformer types) and all data and materials presented at the subcommittee meetings are available via a link under the DOE Web site at: *http://www.regulations.gov/#!docketDetail;D=EERE-2010-BT-STD-0048*.

The ERAC subcommittee held meetings in 2011 on September 28, October 13–14, November 9, and December 1–2 for low-voltage distribution transformers. The ERAC subcommittee also held webinars on November 21, 2011, and December 20, 2011. The meetings were open to the public. During the September 28, 2011, meeting, the subcommittee agreed to its rules of procedure, finalized the schedule of the remaining meetings, and defined the procedural meaning of consensus. The subcommittee defined consensus as unanimous agreement from all present subcommittee members. Subcommittee members were allowed to abstain from voting for an efficiency level; their votes counted neither toward nor against the consensus.

The ERAC subcommittee for low-voltage distribution transformers consisted of representatives of parties having a defined stake in the outcome of the proposed standards and included:

- AK Steel Corporation
- American Council for an Energy-Efficient Economy
- Appliance Standards Awareness Project
- ATI-Allegheny Ludlum
- EarthJustice
- Eaton Corporation
- Federal Pacific Company
- Lakeview Metals
- Efficiency and Renewables Advisory Committee member
- Metglas, Inc.
- National Electrical Manufacturers Association
- Natural Resources Defense Council
- ONYX Power
- Pacific Gas and Electric Company
- Schneider Electric
- U.S. Department of Energy

DOE presented its draft engineering, life-cycle cost and national impacts analysis and results. During the meeting of October 14, 2011, DOE presented its revised analysis and heard from subcommittee members on various topics. During the meeting of November 9, 2011, DOE presented its revised analysis. During the meeting of December 1, 2011, DOE presented its revised analysis based on 2011 core-material prices.

At the conclusion of the final meeting, subcommittee members presented their energy efficiency level recommendations. For low-voltage dry-type distribution transformers, the Advocates, represented by ASAP, recommended EL4 for all DLs; NEMA recommended EL 2 for DLs 7 and 8, and no change from the current standard for DL 6. EEI, AK Steel and ATI Allegheny Ludlum recommended EL 1 for DLs 7 and 8, and no change from the current standard for DL 6. The subcommittee did not arrive at consensus regarding a proposed standard for low-voltage dry-type distribution transformers.

DOE published a NOPR on February 10, 2012, which proposed amended standards for all three transformer types. 77 FR 7282. Medium-voltage dry-type distribution transformers were proposed at the negotiating committee's consensus level. Liquid-immersed distribution transformers were proposed at TSL 1. Low-voltage dry-type distribution transformers were proposed at TSL 1. In the NOPR, DOE sought comment on a number of issues related to the rulemaking.[15]

Following publication of the NOPR, DOE received several comments expressing a desire to see some of the NOPR suggestions extended and analyzed for liquid-immersed distribution transformers. In response, DOE generated a supplementary NOPR analysis with three additional TSLs. The three TSLs presented were based on possible new equipment classes for pole-mounted distribution transformers, network/vault-based distribution transformers, and those with high basic impulse level (BIL) ratings. On June 4, 2012 DOE published a notice announcing the availability of this supplementary analysis[16] and of a public meeting to be held on June 20, 2012 to present and receive feedback on it. DOE also generated an additional TSL in a June 18, 2012 analysis published on DOE's Web site.

III. General Discussion

A. Test Procedures

DOE published its test procedure for distribution transformers in the **Federal Register** as a final rule on April 27, 2006. 71 FR 24972. Section 7(c) of the Process Rule[17] indicates that DOE will issue a final test procedure, if one is needed, prior to issuing a proposed rule for energy conservation standards. Under 42 U.S.C. 6314(a)(1), at least every seven years, DOE must evaluate whether to amend test procedures for each class of commercial equipment based on whether an amended test procedure would more accurately or fully comply with the requirements that test procedures be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle, and that the test procedures are not unduly burdensome to conduct.[18] Any determination that a test procedure amendment is not required under this standard must be published in the **Federal Register**. (42 U.S.C. 6314(a)(1)(A)(ii))

As detailed below, in today's notice, DOE determines that an amended test procedure is not necessary because the 2006 test procedure is reasonably designed to produce test results that reflect energy efficiency and energy use, and an amended test procedure that more precisely measures energy efficiency and energy use for every possible distribution transformer configuration would be unduly burdensome to conduct.

1. General

Several parties commented on the test procedure for distribution transformers. The California Investor Owned Utilities (CA IOUs) commented that DOE should not modify the test procedure. (CA IOUs, No. 189 at p. 1) Today's rule contains no test procedure amendments, but the rule does clarify the test procedure's application in response to comments. DOE may revisit the issue of test procedures in a future proceeding.

NEMA commented that because of variability in process, materials, and testing, manufacturers must ''overdesign'' transformers in order to have confidence that their products will meet standards. (NEMA, No. 170 at p. 3) DOE notes that its compliance procedures already contain allowances for statistical variation as a result of measurement, laboratory, and testing procedure variability. Manufacturers are also required to take certification sampling plans and tolerances into account when developing their certified ratings after testing a sample of minimum units from the production of a basic model. The represented efficiency equation essentially allows a manufacturer to ''represent'' a basic model of distribution transformer as having achieved a higher efficiency than calculated through testing the minimum sample for certification. DOE is not adopting any modifications to its certification or enforcement sampling procedures in this final rule, but it may further address them in a separate proceeding at a later date if it finds such practices to be overly strict or generous.

Additionally, Schneider Electric commented that DOE's test procedure is inadequate or ambiguous in several areas, including test environment drafts, ambient method internal temperatures, test environment ambient temperature variation, ambient method test delays,

[15] On February 24, 2012, DOE published a technical correction to the NOPR, amending and adding values in certain tables in the NOPR. 77 FR 10997.

[16] 77 FR 32916.

[17] The Process Rule provides guidance on how DOE conducts its energy conservation standards rulemakings, including the analytical steps and sequencing of rulemaking stages (such as test procedures and energy conservation standards). (10 CFR Part 430, subpart C, appendix A).

[18] In addition, if the test procedure determines estimated annual operating costs, such procedure must meet additional requirements at 42 U.S.C. 6314(a)(3).

coordination of coil and ambient test methods, temperature data records, and application of voltage or current. (Schneider, No. 180 at p. 12) DOE examined the test procedure components identified by Schneider Electric and determined that, at this time, no change to the test procedure is necessary to address the issues raised. Further, the existing, statutorily-prescribed test procedure is an industry standard familiar to manufacturers. DOE continues to believe that the procedure is reasonably designed to produce test results that reflect energy efficiency and energy use without being unduly burdensome to conduct.

Finally, DOE's present sampling plans require a minimum number of units be tested in order to calculate the represented efficiency of a basic model. (10 CFR 429.47 (a)). Prolec-GE commented that DOE's compliance protocols allow too small a statistical variation, particularly because silicon steel sees a greater variation in losses than does the amorphous variety. (Prolec-GE, No. 177 at p. 17) To the extent Prolec-GE is concerned about the variability in their production, DOE notes that the statistical sampling plans allow for manufacturers to increase the sample size, which should help better characterize the variability association with the production. DOE's existing sampling plans are a balance between manufacturing burden associated with testing and accurately characterizing the efficiency of a given basic model based on a sample of the production. While DOE is not adopting any changes to its existing sampling plans in today's final rule, DOE welcomes data showing the production variability for different types and efficiencies of distribution transformers to help better inform any changes that may be considered in a separate and future proceeding.

2. Multiple kVA Ratings

The current test procedure is not specific regarding which kVA rating should be used to assess compliance in the case of distribution transformers that have more than one rating. Though less common in distribution transformers than in other types of transformers (e.g., ''power'' or ''substation'' transformers), active cooling measures such as fans or pumps are sometimes used to aid cooling. Greater heat dissipation capacity means that the transformer can be safely operated at higher loading levels for longer periods of time. Active cooling components generally carry much shorter lifetimes than the transformer itself, however, and the failure of any cooling component would expose the transformer at-large to premature failure due to elevated temperatures. Accordingly, distribution transformers rarely contain such components and, when they do, rarely make use of them except in occasional overload situations. As a result, they play little role in the design of the transformer or in a transformer's ability to operate efficiently even when equipped.

Apart from ratings corresponding to active cooling, transformers may also carry additional ratings (i.e., above the ''base rating'') corresponding to passive cooling and reflecting different temperature rises. A transformer would be rated for higher kVA if allowed to rise to a greater temperature and, by extension, dissipate more energy.

DOE sought comment on whether the test procedure needs greater specificity with respect to multiple kVA ratings. No party argued that distribution transformers should comply with standards at any ratings corresponding to active cooling, for the reasons discussed above. Four manufacturers (Howard Industries, Cooper Power Systems, Prolec-GE, and Schneider Electric), one trade organization (NEMA), and one utility (Progress Energy) all commented that compliance should be based exclusively on a transformer's ''base'' rating, or the rating that corresponds to the lowest temperature rise. (Prolec-GE, No. 177 at p. 6; Schneider, No. 180 at p. 2; PEMCO, No. 183 at p. 2; PE, No. 192 at p. 3; HI, No. 151 at p. 12; NEMA, No. 170 at pp. 6–7) ABB argued that compliance should be based on a transformer's base rating and on any others (if any) corresponding to passive cooling. (ABB, No. 158 at pp. 2–4) HVOLT commented that the term ''passive cooling'' may not be sufficient to clarify DOE's intent because some transformers have more than one rating which may be achieved with passive cooling. (HVOLT, No. 146 at p. 49)

Though prevalent in certain types of larger transformers, active cooling is not a significant feature in the design or operation of distribution transformers. Distribution transformers are seldom equipped with active cooling features or designed to make use of them. Additionally, units which are equipped with such features are rarely operated using them. As a result, active cooling features bear little influence on transformer efficiency and are not appropriate for use in measuring energy efficiency. Similarly, transformers with more than one rating corresponding to passive cooling will experience reduced equipment lifetime when operated at those high ratings and are therefore best evaluated at their lowest, ''base'' rating. DOE clarifies today that manufacturers should use a transformer's base kVA rating to assess compliance. For distribution transformers with more than one kVA rating, base kVA rating means the kVA rating that corresponds to the lowest temperature rise that actively removes heat from the distribution transformer without engagement of any fans, pumps, or other equipment. It is the base kVA rating and the base kVA rating only, which manufacturers should base their certified ratings on and on which DOE will assess compliance. In no case should a distribution transformer be certified using any kVA rating corresponding to heat removal or enhanced convection by auxiliary equipment.

3. Dual/Multiple Basic Impulse Level

Distribution transformers may be built such that different winding configurations carry different BIL ratings. In the past, MVDT transformers were placed into equipment classes by BIL rating (among other criteria) and the question arose of which rating (if there were more than one) should be used to assess compliance. Currently, DOE requires distribution transformers to comply with standards using the BIL rating of the winding configuration that produces the greatest losses. (10 CFR part 431, subpart K, appendix A)

BIL rating offers additional utility in the form of increased resistance to large voltage transients arising, for example, from lightning strikes, but requires some design compromises that affect efficiency, primarily with respect to winding clearances. A transformer rated for a given BIL must be designed as such, even if the windings may be reconfigured such that they carry a lower rating. For this reason, Progress Energy, PEMCO, NEMA, Cooper Power Systems, Power Partners, and Howard Industries all commented that transformers with multiple BIL ratings should comply only at the highest BIL for which they are rated. (HI, No. 151 at p. 12; Power Partners, No. 155 at p. 1–2; Cooper, No. 165 at p. 2; NEMA, No. 170 at p. 7; Prolec-GE, No. 177 at p. 6; PEMCO, No. 183 at p. 2; PE, No. 192 at p. 3) ABB commented that transformers should meet the efficiency levels of all of its rated BILs, because there is no way to know in advance how a transformer will be operated over its lifetime. (ABB, No. 158 at p. 4)

Although DOE agrees there is no way to be sure how a distribution transformer will be operated over its lifetime, it does not believe multiple BIL ratings currently present an energy conservation standards circumvention risk. Designing transformers to higher BIL ratings adds cost and consumers would be unlikely to utilize them unless genuinely required by the application.

DOE clarifies that transformers may be certified at any BIL for which they are rated, including the highest BIL ratings. This does nothing to change DOE's requirement that distribution transformers comply in the configuration that produces the greatest losses, however, even if that configuration itself does not carry the highest BIL rating. For example, a MVDT distribution transformer may have two winding configurations, respectively BIL rated at 60 kV and 125 kV. Although the distribution transformer must meet only the 125 kV standards, it may produce greater losses (and thus need to be certified) in the 60 kV configuration.

4. Dual/Multiple-Voltage Primary Windings

Currently, DOE requires manufacturers to comply with energy conservation standards while the distribution transformer's primary windings (''primaries'') are in the configuration that produces the highest losses. (10 CFR part 431, subpart K, appendix A)

DOE understands that, in contrast to the secondary windings, reconfigurable primaries typically exhibit a larger variation in efficiency between series and primary connections. Such transformers are often purchased with the intent of upgrading the local power grid to a higher operating voltage and lowered overall system losses.

Several parties commented on the matter of primary winding configurations in response to the NOPR. Kentucky Association of Electric Cooperatives (KAEC), Cooper Power Systems, NEMA, and Progress Energy commented that it is least burdensome for manufacturers if they can report losses in the same configuration in which the transformers are shipped, which by Institute of Electrical and Electronics Engineers (IEEE) standards must be the series configuration. (KAEC, No. 149 at p. 2; NEMA, No. 170 at p. 6; PE, No. 192 at p. 10; PE, No. 192 at p. 2; Prolec-GE, No. 177 at p. 5; Schneider, No. 180 at p. 2; Schneider, No. 180 at p. 8; Cooper Power Systems, No. 222 at p. 3) Howard Industries and Prolec-GE commented that manufacturers should be allowed to test distribution transformers with their primaries in any configuration. (HI, No. 151 at p. 12; Prolec-GE, No. 177 at p. 5) Utilities Baltimore Gas and Electric and Commonwealth Edison supported testing in the configuration in which the transformer will ultimately be used. (BG&E, No. 182 at p. 2; ComEd, No. 184 at p. 2)

ABB submitted comments and data explaining that the ratios of the losses of different winding positions varied considerably and, as a result, that there was no reliable way to predict which configuration would carry the lowest losses. ABB and the California IOUs supported maintaining the test procedure's current requirements. (ABB, No. 158 at p. 2; CA IOUs, No. 189 at pp. 1–2)

DOE is concerned that the primary winding configuration can have a significant impact on energy consumption and that by relaxing the restriction of compliance in the configuration producing the highest losses, any forecasted energy savings may be diminished. DOE is not modifying any test procedure requirements in today's rule, but may reexamine the topic in a dedicated test procedure rulemaking in the future.

5. Dual/Multiple-Voltage Secondary Windings

DOE understands that some distribution transformers may be shipped with reconfigurable secondary windings, and that certain configurations may have different efficiencies. Currently, DOE requires distribution transformers to be tested in the configuration that exhibits the highest losses. Whereas the IEEE standard [19] requires a distribution transformer to be shipped with the windings in series, a manufacturer testing for compliance might need to disassemble the unit, reconfigure the windings, and reassemble the unit for shipping at added time and expense.

Several parties commented on the matter of reconfigurable secondary windings. Cooper Power Systems, KAEC, NEMA, Progress Energy, and Schneider Electric supported conducting testing with windings in series, as is the IEEE convention and as would produce the highest voltage. (Cooper, No. 165 at pp. 1–2, 6 No. 222 at p. 3; HI, No. 151 at p. 12; KAEC, No. 149 at p. 2; NEMA, No. 170 at p. 6; PE, No. 192 at p. 10; PE, No. 192 at p. 2; Schneider, No. 180 at p. 2; Schneider, No. 180 at p. 8)

Power Partners and Prolec-GE commented that testing should be permitted in any winding configuration at the discretion of the manufacturer. (Power Partners, No. 155 at p. 1; Prolec-GE, No. 177 at pp. 3–4)

Additionally, ABB and the California IOUs commented that there was no way of knowing which position would produce the greatest losses and, therefore, the test procedure should remain unchanged with respect to winding configuration requirements. (ABB, No. 158 at p. 2; CA IOUs, No. 189 at p. 1–2)

DOE is concerned that secondary windings may have significantly different losses in various configurations and that, furthermore, there is no reliable way to predict in which configuration the transformer will be operated over the majority of its lifetime. Just as with dual/multiple primary windings, changing the requirement of testing in the configuration producing the highest losses, may diminish forecasted energy savings. As a result, DOE is not modifying any test procedure requirements in today's rule, but may reexamine the topic in a dedicated test procedure rulemaking in the future.

6. Loading

Currently, DOE requires that both liquid-immersed and medium-voltage dry-type distribution transformers comply with standards at 50 percent loading and that low-voltage dry-type distribution transformers comply at 35 percent loading. DOE wishes to clarify that the loading discussed herein pertains only to that which manufacturers must use to test their equipment. DOE's economic analysis uses loading distributions that attempt to reflect the most recent understanding of the United States electrical grid. DOE does not believe that all (or the average of all) customers utilize transformers at the required test procedure loading values.

Several parties commented on the appropriateness of these test loading values. ABB, ComEd, Cooper, EEI, Howard, KAEC, NEMA, NRECA, PEMCO, Prolec-GE, and Schneider all commented that the values were appropriate and should continue to be used. (ABB, No. 158 at p. 5; ComEd, No. 184 at p. 2; Cooper, No. 165 at p. 2; EEI, No. 185 at p. 4; HI, No. 151 at p. 12; KAEC, No. 149 at p. 3; NEMA, No. 170 at p. 12; NRECA, No. 172 at p. 4; PEMCO, No. 183 at p. 2; Prolec-GE, No. 177 at p. 7; Schneider, No. 180 at p. 3)

Progress Energy commented that it believed the current values suffice for the present but that DOE should further explore the topic in the future. (PE, No. 192 at p. 3) BG&E commented that utilities had oversized transformers in the past due to lack of ability to accurately monitor loading and that loading will increase in the future. (BG&E, No. 182 at p. 3) Finally, MGLW and the Copper Development

[19] IEEE C57.12.00–2010.

Association commented that DOE should use a test procedure that requires measurements at several loading levels and reporting of efficiency as a weighted average of those. (MLGW, No. 133 at p. 2; CDA, No. 153 at p. 4)

DOE understands that distribution transformers experience a range of loading levels when installed in the field. DOE understands that the majority of stakeholders, including manufacturers and utilities, support retention of the current testing requirements and DOE determined that its existing test procedure provides results that are representative of the performance of distribution transformers in normal use. Although DOE may examine the topic of potential loading points in a dedicated test procedure rulemaking in the future, at this time, DOE does not believe that the potential improvement in testing precision outweighs the complexity and the burden of requiring testing at different loadings depending on each individual transformer's characteristics.

B. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis based on information it has gathered on all current technology options and prototype designs that could improve the efficiency of the products that are the subject of the rulemaking. As the first step in such 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 these 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 430, subpart C, appendix A, section 4(a)(4)(i) There are distribution transformers available at all of the energy efficiency levels considered in today's final rule. Therefore, DOE believes all of the energy efficiency levels adopted by today's final rulemaking are technologically feasible.

Once DOE has determined that particular technology options are technologically feasible, it further evaluates each of them 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. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE considers an amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for that equipment. (42 U.S.C. 6295(p)(1); 42 U.S.C. 6316(a)) While developing the energy conservation standards for liquid-immersed and medium-voltage dry-type distribution transformers that were codified under 10 CFR 431.196, DOE determined the maximum technologically feasible (max-tech) energy efficiency level through its engineering analysis. The max-tech design incorporates the most efficient materials, such as core steels and winding materials, and applied design parameters that create designs at the highest efficiencies achievable at the time. 71 FR 44362 (August 4, 2006) and 72 FR 58196 (October 12, 2007). DOE used those designs to establish max-tech levels for its LCC analysis, then scaled them to other kVA ratings within a given design line to establish max-tech efficiencies for all the distribution transformer kVA ratings. For today's rule, DOE determined max-tech in exactly the same manner.

C. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the products that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with amended standards (2016–2045). The savings are measured over the entire lifetime of products purchased in the 30-year period.[20] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption in the absence of amended mandatory efficiency standards, and considers market forces and policies that affect demand for more efficient products.

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. The NIA spreadsheet model calculates energy savings in site electricity, which is the energy directly consumed by transformers at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To convert site electricity to primary energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2012* (*AEO 2012*). Recent data suggests that electricity related losses, which includes conversion from the primary fuel source and the transmission of electricity, is about twice that of site electricity use.

2. Significance of Savings

As noted above, 42 U.S.C. 6295(o)(3)(B) prevents DOE from adopting a standard for covered equipment if such a standard would not result in significant energy savings. While EPCA does not define the term ''significant,'' the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (DC 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 are non-trivial and, therefore, DOE considers them significant within the meaning of EPCA section 325(o).

D. Economic Justification

1. Specific Criteria

As noted previously, EPCA requires DOE to evaluate seven factors to determine whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections describe how DOE has addressed each of the seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of an amended standard on manufacturers, DOE first determines the quantitative impacts using an annual cash-flow approach. This includes both a short-term assessment, based on the cost and capital requirements during the period between the issuance of a regulation and when entities must comply with the regulation, and a long-term assessment for a 30-year analysis period. The

[20] In the past DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. Because some transformers sold in 2045 will reach the maximum transformer lifetime of 60 years, DOE calculated economic impacts through 2105. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

industry-wide impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income. Second, DOE analyzes and reports the impacts on different types of manufacturers, paying particular attention to impacts on small manufacturers. See section VI.B for further discussion. 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 customers, measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, which is separately specified 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 customers in the aggregate, DOE also calculates the national NPV of the economic impacts on customers over the forecast period applicable to a particular rulemaking.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a type of equipment (including its installation) and the operating expense (including energy and maintenance and repair expenditures) discounted over the lifetime of the equipment. The LCC savings for the considered energy efficiency levels are calculated relative to a base case that reflects likely trends in the absence of amended standards. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and customer discount rates. DOE assumed in its analysis that customers will purchase the considered equipment in 2016.

To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values with probabilities attached to each value. A distinct advantage of this approach is that DOE can identify the percentage of customers 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 customers that may be disproportionately affected 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 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 Equipment

In establishing classes of equipment, and in evaluating design options and the impact of potential standard levels, DOE sought to develop standards for distribution transformers that would not lessen the utility or performance of the equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) None of the TSLs presented in today's final rule would lessen the utility or performance of the equipment under consideration in the 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, 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 transmitted a copy of its proposed rule and NOPR TSD to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOJ's response, that the proposed energy conservation standards are unlikely to have a significant adverse impact on competition, is reprinted at the end of this final rule.

f. Need for National Energy Conservation

Certain benefits of the amended standards for distribution transformers are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity may also result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducted a utility impact analysis, described in section IV.K to estimate how standards may affect the Nation's needed power generation capacity. (See 42 U.S.C. 6295(o)(2)(B)(i)(VI))

Energy savings from the amended standards are also 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 chapter 15 of the TSD for the final rule. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs (see section IV.M of this final rule).

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 of Energy considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) Under this provision, DOE has also considered the matter of electrical steel availability. This factor is discussed further in sections IV.C.9. and IV.I.5.a.

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 customer of a type of equipment that meets the standard is less than three times the value of the first-year of 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 PBP for consumers of potential amended energy conservation standards. These analyses include, but are not limited to, the three-year PBP contemplated under the rebuttable presumption test. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the customer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any three-year PBP analysis). The rebuttable presumption payback calculation is discussed in sections IV.F.3.j and V.B.1.c of this final rule.

IV. Methodology and Discussion of Related Comments

DOE used two spreadsheet tools to estimate the impact of today's amended standards. The first spreadsheet calculates LCCs and PBPs of potential new energy conservation standards. The second provides shipments forecasts and calculates impacts of potential new energy conservation standards on national NES and NPV. DOE also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM). The two spreadsheets are available online at the rulemaking Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/66*.

Additionally, DOE estimated the impacts of energy conservation standards for distribution transformers on utilities and the environment using a version of the Energy Information Administration's (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 (*AEO),* a widely known energy forecast for the United States. The version of NEMS used for appliance standards analysis, called NEMS–BT,[21] is based on the *AEO* version with minor modifications.[22] The NEMS–BT offers a sophisticated picture of the effect of standards because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

For the market and technology assessment, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, 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 included scope of coverage, definitions, equipment classes, types of equipment sold and offered for sale, and technology options that could improve the energy efficiency of the equipment under examination. Chapter 3 of the TSD contains additional discussion of the market and technology assessment.

1. Scope of Coverage

This section addresses the scope of coverage for today's final rule, stating what equipment will be subject to amended standards.

a. Definitions

Today's standards rulemaking concerns distribution transformers, which include three categories: Liquid-immersed, low-voltage dry-type (LVDT), and medium-voltage dry-type (MVDT). The definition of a distribution transformer was presented in EPACT 2005, then further refined by DOE when it was codified into 10 CFR 431.192 by the April 27, 2006, final rule for distribution transformer test procedures (71 FR 24972).

Additional detail on the definitions of each of these excluded transformers, which are defined at 10 CFR 431.192, can found in chapter 3 of the TSD.

Many stakeholders expressed support for the defined scope of coverage presented in the NOPR. (ABB, No. 158 at p. 5; Cooper, No. 165 at p. 2; HI, No. 151 at p. 12; KAEC, No. 149 at p. 4; NEMA, No. 170 at p. 8; PEMCO, No. 183 at p. 2; Prolec-GE, No. 177 at p. 7) NRECA pointed out that while some of its members might purchase distribution transformers outside the scope of coverage so few of these types of transformers are made it does not warrant a change in coverage. (NRECA, No. 172 at p. 4–5) Progress Energy agreed, noting that while utilities will occasionally purchase transformers outside of this range, it is a very small percentage of the total number of distribution transformers purchased. (PE, No. 192 at p. 4) EEI was not aware of any of member that purchased units outside of the current defined kVA range. (EEI, No. 185 at p. 5) Finally, BG&E and ComEd noted that DOE has spent a significant amount of time developing efficiency levels for each kVA size and that therefore they supported the current scope. (BG&E, No. 182 at p. 3; ComEd, No. 184 at p. 3) Power Partners was also in support of the current scope, but noted that if separate product classes were established for overhead transformers and network/vault transformers the kVA scope for those product classes should be aligned with the specific requirements for those product standards. (Power Partners, No. 155 at p. 3)

Several stakeholders expressed that additional kVA ranges should be added to the scope of coverage. Specifically, Schneider Electric requested that for LVDT products, the following kVA ranges would add value to the national impact benefits: 1kVA through 500kVA single phase and 3kVA through 1500kVA three phase. (Schneider, No. 180 at p. 4) Similarly, CDA requested an increased range, urging DOE to extend its kVA coverage to sizes about 2,500 kVA. (CDA, No. 153 at p. 2)

Earthjustice expressed concern over sealed and non-ventilating transformers. It felt that these products represented a potential loophole for smaller transformers in DL7 and noted that DOE should revise its definition to ensure these units do not displace covered units. (Earthjustice, No. 195 at p. 6) Similarly, Earthjustice noted revisions to the definition of ''uninterruptible power supply transformer might be necessary'' as some manufacturers are selling exempt UPS units, that are otherwise not covered, for general purpose applications at a cost of 30–40 percent lower than covered transformers. (Earthjustice, No. 195 at p. 6) CDA requested that DOE seek legislation to expand its scope to include power transformers. (CDA, No. 153 at p. 2)

Schneider Electric requested that DOE reevaluate several definitions in its scope of coverage. First, it asked that DOE address its tap ranges and the determination of covered equipment versus products versus exempt equipment to possibly capture further energy savings. Second, it requested that DOE re-evaluate special impedance transformers and ranges. Finally, it noted that because low voltage is limited to 600 volts and below, market conditions have created multiple voltages in the 1.2kV class of equipment, but current standards[23] require this equipment to be evaluated as medium voltage or excluded since the secondary voltage is limited to less than 600 volts. (Schneider, No. 180 at p. 12) Schneider believes that these equipment groups and definitions require reconsideration to prevent circumvention of standards and capture further energy savings.

DOE appreciates the comment on its scope of coverage. With respect to kVA, DOE's current standards are consistent with several NEMA publications. For liquid-immersed and medium-voltage dry-type transformers, both DOE coverage and that of NEMA's TP–1 standard extends to 833 kVA for single-phase units and 2500 kVA for three-phase units. For low-voltage dry-type units, both DOE coverage and that of NEMA's Premium specification extends to 333 kVA for single-phase units and

[21] BT stands for DOE's Building Technologies Program (*http://www1.eere.energy.gov/buildings/*).

[22] The EIA allows 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. 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.*

[23] *See* 10 CFR 431.196.

1000 kVA for three-phase units. DOE cites these documents as evidence that its kVA scope is consistent with industry understanding. DOE may revise its understanding in the future as the market evolves, but for today's rule maintains the kVA scope proposed in the NOPR.

For sealed and nonventilating transformers, uninterruptible power supply transformers, special impedance transformers, and those with tap ranges of greater than twenty percent, DOE notes that these types of equipment are specifically excluded from standards under EPCA, as amended, 42 USC 6291 (35)(B)(ii)), as codified at 10 CFR 431.192.

Cooper Power systems requested clarification on several points relating to scope of coverage. Some transformers are built with the ability to output at multiple voltages, any number of which may fall within DOE's scope of coverage. For transformers having multiple nominal voltage ratings that straddle the present boundaries of DOE's scope of coverage (i.e., a secondary voltage of 600/1200 volts), Cooper recommended that DOE clarify whether the entire distribution transformer is exempt from efficiency standards. Cooper felt it was unclear if both configurations would have to meet the efficiency standard, neither would meet the standard, or only the secondary voltage of 600 would have to meet the standard. (Cooper Power Systems, No. 222 at p. 3) Second, for three-phase transformers with wye-connected phase windings or single-phase transformers that are rated for externally connecting in a wye configuration, where the phase-to-phase voltage exceeds the present boundaries of the definition of distribution transformer, Cooper requested that DOE clarify that these units are exempt from the standard because the secondary voltage exceeds 600 volts. (Cooper Power Systems, No. 222 at p. 3)

DOE clarifies that the definition of distribution transformer refers to a transformer having an output voltage of 600 volts or less, not having only an output voltage of less than 600 volts. If the transformer has an output of 600 volts or below and meets the other requirements of the definition, DOE considers it to be a distribution transformer within the scope of coverage and therefore subject to standards. This applies equally to transformers with split secondary windings (as in Cooper's first example) and to three-phase transformers where the delta connection may fall below 601 volts and the wye connection may not. DOE also clarifies that once it is determined that a transformer is subject to standards, DOE's test procedure requires that a transformer comply with the standard when tested in the configuration that produces the greatest losses, regardless of whether that configuration alone would have placed the transformer at-large within the scope of coverage under 10 CFR 431.192.

b. Underground and Surface Mining Transformer Coverage

In the October 12, 2007, final rule on energy conservation standards for distributions transformers, DOE codified into 10 CFR 431.192 the definition of an underground mining distribution transformer as follows:

Underground mining distribution transformer means a medium-voltage dry-type distribution transformer that is built only for installation in an underground mine or inside equipment for use in an underground mine, and that has a nameplate which identifies the transformer as being for this use only. 72 FR 58239.

In that same final rule, DOE also clarified that although it believed those transformers were within its scope of coverage, it was not establishing energy conservation standards for underground mining transformers. At the time, DOE recognized that the mining transformers were subject to unique and extreme dimensional constraints that impact their efficiency and performance capabilities. Therefore, DOE established a separate equipment class for mining transformers and stated that it might consider energy conservation standards for such transformers at a later date. Although DOE did not establish energy conservation standards for such transformers, it also did not add underground mining transformers to the list of excluded transformers in the definition of a distribution transformer. DOE maintained that it had the authority to cover such equipment if, during a later analysis, it found technologically feasible and economically justified energy conservation standard levels. 72 FR 58197.

Several stakeholders commented on DOE's definition for mining transformers during the current rulemaking. Joy Global Surface Mining recommended that surface mining transformers be added to the exemption list under the following definition: ''Surface mining transformer is a medium-voltage dry-type distribution transformer that is built only for installation in a surface mine, on-board equipment for use in a surface mine or for equipment used for digging or drilling above ground. It shall have a nameplate which identifies the transformer as being for this use only.'' (Joy Global Surface Mining, No. 214 at p. 1) ABB and PEMCO agreed that ordinary (i.e., non-surface) mining transformers should be moved to the exclusion list in 10 CFR 431.192 (5). (ABB, No. 158 at p. 5; PEMCO, No. 183 at p. 2) PEMCO felt strongly that underground mining transformers should be in the list of transformers excluded from the efficiency standard, pointing out that ''underground mining transformers require the use of much heavier cores and thus have an even larger reason to be excluded than some product types already excluded.'' (PEMCO, No. 183 at p. 2) NEMA commented that all underground mining transformers should be made exempt from the DOE energy efficiency regulation for MVDT due to the special circumstances they must operate under; dimensions and weight are critical for these products, and to reduce the weight and size these transformers are operated near full load, therefore, compliance with DOE regulation will not optimize efficiency. (NEMA, No. 170 at p. 11) Cooper Power suggested that DOE expand the definition of mining transformers to include both liquid filled and dry-type transformers, and specify that this only applies to transformers used inside the mine itself; Cooper supports the exclusion of these transformers from efficiency standards. (Cooper, No. 165 at p. 2) ABB asserted that the definition of mining transformers should be expanded to include transformers used for digging or tunneling. Furthermore, ABB asserted that such equipment should be moved to the exclusion list in 10 CFR 431.192 (5). (ABB, No. 158 at p. 6)

DOE has learned from comments received throughout the rulemaking that mining transformers are subject to several constraints that are not usually concerns for transformers used in general power distribution. Because space is critical in mines, an underground mining transformer may be at a considerable disadvantage in meeting an efficiency standard. Underground mining transformers are further disadvantaged by the fact that they must supply power at several output voltages simultaneously. For today's rule, DOE will again set no standards for underground mining transformers but expands this treatment to include surface mining transformers. Moreover, as commenters point out, surface mining transformers are used to operate specialized machinery which carries space constraints of its own. Furthermore, mining transformers in general perform a role that may differ from general power distribution in many regards, including lifetime, loading, and often the need to supply power at several voltages simultaneously. As DOE had intended its prior determination regarding mining transformers to apply to all mining activities, for today's rule, DOE will again set no standards for underground mining transformers but clarify that this determination also applies to surface mining transformers. Thus, DOE has amended the definition of ''mining transformer'' to include surface mining transformers.

In view of the above, DOE recognizes a potential means to circumvent energy efficiency standards requirements for distribution transformers. Therefore, DOE continues to leave both underground and surface mining transformers off of the list of distribution transformers that are not covered under 10 CFR 431.192, but instead reserve a separate equipment class for mining transformers. DOE may set standards in the future if it believes that underground or surface mining transformers are being purchased as a way to circumvent energy conservation standards for distribution transformers otherwise covered under 10 CFR 431.192.

c. Step-Up Transformers

In the 2012 NOPR, DOE proposed to continue to not set standards for step-up transformers, as these transformers are not ordinarily considered to be performing a power distribution function. However, DOE was aware that step-up transformers may be able to be used in place of step-down transformers (i.e., by operating them backwards) and may represent a potential means to circumvent any energy efficiency requirements as standards increase. In the NOPR, DOE requested comment regarding this issue.

Many stakeholders expressed support for adding step-up transformers to the scope of coverage. Howard Industries commented that there is no practical reason for excluding these transformers, and that DOE should require step-up transformers to meet the same efficiency as step-down, as long as either the output or input voltage is 600 volts or less. They expressed concern that eliminating these transformers would present a potential loophole. (HI, No. 151 at p. 12) Prolec-GE agreed, noting that to eliminate this loophole, step-up transformers should at least indicate their purpose on their nameplates. (Prolec-GE, No. 146 at pp. 55–56) However, Earthjustice commented that simply requiring nameplates for these transformers would be unlikely to deter some users from installing step-up transformers in place of covered transformers. They expressed their concern that DOE had not addressed potential loopholes that had been identified in the rulemaking. (Earthjustice, No, 195 at pp. 5–6) Advocates agreed with comments made during negotiations arguing that step-up transformers should be covered by new standards due to similarities to distribution transformer that could easily lead to substitution and circumvention. (Advocates, No. 186 pp. 5–6) Finally, Berman Economics commented that because step-up transformers had not been included in the 2007 final rule, leaving them uncovered may lead to unintended circumvention. (Berman Economics, No. 221 at p. 7)

Other stakeholders expressed their support for DOE's decision to not separately define and set standards for step-up transformers. (Cooper, No. 165 at p. 2; NEMA, No. 170 at p. 8; BG&E, No. 182 at p. 3) APPA and EEI agreed, pointing out that while in emergency conditions one can occasionally see a step-up transformer used as a step-down transformer, these situations are rare and overall do not result in significant transformer efficiency loss. (APPA, No. 191 at p. 6; EEI, No. 185 at p. 5–6) Progress Energy commented similarly, noting that they do not purchase step-up transformers for use as step-down transformers. (PE, No. 192 at p. 4) ABB and Prolec-GE agreed with the decision to not set separate standards for step-up transformers but requested that these transformers be identified on their nameplate uniformly across the industry. (ABB, No. 158 at p. 6; Prolec-GE, No. 177 at p. 7) PEMCO commented that no action was necessary as the product class falls outside the current definition of a distribution transformer. (PEMCO, No. 183 at p. 2) Schneider Electric sought clarification given the existing definition in section 431.192 and noted that the current standards do not exclude step-up LVDT transformers as written. (Schneider, No. 180 at p. 4)

For today's rule, DOE continues to consider step-up transformers as equipment that is not covered, because they do not perform a function traditionally viewed as power distribution. Transformer coverage is not determined simply based on whether the transformer is stepping voltage up or down. DOE clarifies that liquid-immersed step-up transformers usually fall outside of the rulemaking scope of coverage because of limits on input and output voltage, and not because they are excluded per se. Liquid-immersed and medium-voltage dry-type transformers tend to fall within DOE's scope of coverage only if stepping down voltage because the input voltage upper limit (34.5 kV) is much greater than the output voltage limit (600 V). No such distinction exists for LVDT transformers, which are covered for input and output voltages of 600 V or below, regardless of whether stepping voltage up or down. Nonetheless, because of the circumvention risk, DOE will monitor the use of step-up transformers and consider establishing standards for them, if warranted.

d. Low-Voltage Dry-Type Distribution Transformers

10 CFR 431.192 defines the term ''low-voltage dry-type distribution transformer'' to be a distribution transformer that has an input voltage of 600 V or less; is air-cooled; and does not use oil as a coolant.

Because EPACT 2005 prescribed standards for LVDTs, which DOE incorporated into its regulations at 70 FR 60407 (October 18, 2005) (codified at 10 CFR 431.196(a)), LVDTs were not included in the 2007 standards rulemaking. As a result, the settlement agreement following the publication of the 2007 final rule does not affect LVDT standards. Without regard to whether DOE may have a statutory obligation to review standards for LVDTs, DOE has analyzed all three transformer types and is proposing standards for each in this rulemaking.

e. Negotiating Committee Discussion of Scope

Negotiation participants noted that both network/vault transformers and ''data center'' transformers may experience disproportionate difficulty in achieving higher efficiencies because of certain features that may affect consumer utility. (ABB, Pub. Mtg. Tr., No. 89 at p. 245) In the NOPR, DOE reprinted definitions for these terms, which were proposed at various points by committee members. 77 FR 7301. DOE sought comment in its NOPR about whether it would be appropriate to establish separate equipment classes for any of the following types and, if so, how such classes might be defined such that it was not financially advantageous for customers to purchase transformers in either class for general use. Please see IV.A.2.c for further discussion of DOE's equipment classes in today's final rule.

2. Equipment Classes

DOE divides covered equipment into classes by: (a) The type of energy used; (b) the capacity; and/or (c) any performance-related features that affect consumer utility or efficiency. (42 U.S.C. 6295(q)) Different energy conservation standards may apply to different equipment classes (ECs). For the preliminary and NOPR analyses, DOE analyzed the same 10 ECs as were used in the previous distribution transformers energy conservation standards rulemaking.[24] These 10 equipment classes subdivided the population of distribution transformers by:

(a) Type of transformer insulation—liquid-immersed or dry-type,

(b) Number of phases—single or three,

(c) Voltage class—low or medium (for dry-type units only), and

(d) Basic impulse insulation level (for medium-voltage dry-type units only).

On August 8, 2005, the President signed into law EPACT 2005, which contained a provision establishing energy conservation standards for two of DOE's equipment classes—EC3 (low-voltage, single-phase dry-type) and EC4 (low-voltage, three-phase dry-type). With standards thereby established for low-voltage dry-type distribution transformers, DOE no longer considered these two equipment classes for standards during the 2007 final rule. In today's rulemaking, however, DOE has decided to address all three types of distribution transformers and is establishing new standards for all three types of distribution transformers, including low-voltage dry-type distribution transformers. Table IV.1 presents the ten equipment classes proposed in the NOPR and finalized in this rulemaking and provides the associated kVA range with each.

TABLE IV.1—DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES

EC	Insulation	Voltage	Phase	BIL Rating	kVA Range
1	Liquid-immersed	Medium	Single		10–833 kVA
2	Liquid-immersed	Medium	Three		15–2500 kVA
3	Dry-type	Low	Single		15–333 kVA
4	Dry-type	Low	Three		15–1000 kVA
5	Dry-type	Medium	Single	20–45kV	15–833 kVA
6	Dry-type	Medium	Three	20–45kV	15–2500 kVA
7	Dry-type	Medium	Single	46–95kV	15–833 kVA
8	Dry-type	Medium	Three	46–95kV	15–2500 kVA
9	Dry-type	Medium	Single	≥ 96kV	75–833 kVA
10	Dry-type	Medium	Three	≥ 96kV	225–2,500 kVA

a. Less-Flammable Liquid-Immersed Transformers

During the previous rulemaking, DOE solicited comments about how it should treat distribution transformers filled with an insulating fluid of higher flash point than that of traditional mineral oil. 71 FR 44369 (August 4, 2006). Known as ''less-flammable, liquid-immersed'' (LFLI) transformers, these units are marketed to some applications where a fire would be especially costly and traditionally served by the dry-type market, such as indoor applications.

During preliminary interviews with manufacturers, DOE was informed that LFLI transformers might offer the same utility as dry-type transformers since they were unlikely to catch fire. Manufacturers also stated that LFLI transformers could have a minor efficiency disadvantage relative to traditional liquid-immersed transformers because their more viscous insulating fluid requires more internal ducting to properly circulate.

In the October 2007 standards final rule, DOE determined that LFLI transformers should be considered in the same equipment class as traditional liquid-immersed transformers. DOE concluded that the design of a transformer (i.e., dry-type or liquid-immersed) was a performance-related feature that affects the energy efficiency of the equipment and, therefore, dry-type and liquid-immersed should be analyzed separately. Furthermore, DOE found that LFLI transformers could meet the same efficiency levels as traditional liquid-immersed units. As a result, DOE did not separately analyze LFLI transformers, but relied on the analysis for the mineral oil liquid-immersed transformers. 72 FR 58202 (October 12, 2007).

DOE revisited the issue in this rulemaking in light of additional research on LFLI transformers and conversations with manufacturers and industry experts. DOE first considered whether LFLI transformers offered the same utility as dry-type equipment, and came to the same conclusion as in the last rulemaking. While LFLI transformers can be used in some applications that historically use dry-type units, there are applications that cannot tolerate a leak or fire. In these applications, customers assign higher utility to a dry-type transformer. Since LFLI transformers can achieve higher efficiencies than comparable dry-type units, combining LFLIs and dry-types into one equipment class may result in standard levels that dry-type units are unable to meet. Therefore, DOE decided not to analyze LFLI transformers in the same equipment classes as dry-type distribution transformers.

Similarly, DOE revisited the issue of whether or not LFLI transformers should be analyzed separately from traditional liquid-immersed units. DOE concluded, once again, that LFLI transformers could achieve any efficiency level that mineral oil units could achieve. Although their insulating fluids are slightly more viscous, this disadvantage has little efficiency impact and diminishes as efficiency increases and heat dissipation requirements decline. Furthermore, at least one manufacturer suggested that LFLI transformers might be capable of higher efficiencies than mineral oil units because their higher temperature tolerance may allow the unit to be downsized and run hotter than mineral oil units. For these reasons, DOE believes that LFLI transformers would not be disproportionately affected by standards set in the liquid-immersed equipment classes. Therefore, DOE did not consider LFLI in a separate equipment class.

b. Pole-Mounted Liquid-Immersed Distribution Transformers

During negotiations and in response to the NOPR, several parties raised the question of whether pole-mounted, pad-mounted, and possibly other types of

[24] See chapter 5 of the TSD for further discussion of equipment classes.

liquid-immersed transformers should be considered in separate equipment classes. For example, pole-mounted distribution transformers may carry differential incremental cost characteristics and face different size and weight constraints than transformers mounted on the ground. They may also have different features, and experience different loading conditions than some other transformer types. These type of questions led DOE to request comment in the NOPR on whether pole-mounted distribution transformers warranted consideration in a separate equipment classes. A number of parties responded. In response to suggestions in these comments, DOE gave more detailed consideration to separating pole-mounted distribution transformers in a supplementary NOPR analysis, announced in a June 4, 2012, Notice of Public Meeting and Data Availability. 77 FR 32916.

APPA, ASAP, BG&E, ComEd, Howard, Progress Energy, Pepco, and Power Partners all supported separation of pole-mounted transformers into separate equipment classes for the above-mentioned reasons. Size and weight was the most commonly-cited reason. (APPA, No. 191 at p. 7, No. 237 at p. 3; ASAP, No. 146 at pp. 69–70; BG&E, No. 146 at p. 69, No. 182 at p. 4; ComEd, No. 184 at p. 8, No. 227 at p. 2; HI, No. 151 at p. 4, No. 226 at p. 1; PE, No. 192 at p. 5, Pepco, No. 146 at p. 68, No. 145 at pp. 2–3; Power Partners, No. 155 at p. 2)

ABB, NEMA, Berman Economics, Cooper, EEI, AK Steel, and KAEC stated that the increase in standards did not warrant separate treatment of pole-mounted transformers, stating that separation adds complexity to the regulation and does not allow manufacturers of both pole-mounted and other types of liquid-immersed distribution transformers to standardize manufacturing and design practices across product lines. (ABB, No. 158 at p. 6; Berman Economics, No. 150 at p. 19, No. 221 at p. 4; Cooper, No. 165 at p. 3; EEI, No. 229 at p. 2; AK Steel, No. 230 at p. 3; KAEC, No. 149 at p. 4; NEMA, No. 170 at p. 12)

The Advocates, NEMA, and Prolec-GE commented that separation may be warranted but only if DOE opted for higher standards than were proposed in the NOPR. (Advocates, No. 158 at p. 13; Prolec-GE, No. 177 at p. 3; NEMA, No. 170 at p. 14)

NEMA further noted that the matter was complicated and that there were advantages to both approaches. (NEMA, No. 225 at p. 4) Finally, EEI and NRECA commented that DOE should explore the matter but in the next rulemaking for distribution transformers. (EEI, No. 185 at p. 7; NRECA, No. 172 at p. 7) NRECA supported the concept of separation, but this support was qualified by concerns that DOE might raise the efficiency levels. (NRECA, No. 172 at pp. 5–6)

Based on the array of views on this issue and the potential energy and cost savings to weigh, DOE conducted further analysis of this of liquid-immersed transformers issue and presented the findings of its supplementary analysis at a public meeting on June 20, 2012. 77 FR 32916 (June 4, 2012). In today's rule, DOE has chosen not to separate pad and pole-mounted transformers. DOE's concerns about steel competitiveness and availability were not resolved through comments in response to both the NOPR and the supplemental analysis. Moreover, the comments did not demonstrate that establishing standards for transformers separated by those on pads and those on poles was superior to the approach taken in the proposed rule. Therefore, DOE chose not to finalize separate standards for pad-mounted transformers in today's final rule. However, DOE appreciates the concerns about allowing manufacturers to standardize manufacturing and design practices across product lines. DOE may consider establishing separate equipment classes for pole-mounted distribution transformers in the future, but at present believes the equipment class structure proposed in the NOPR to be justified for today's final rule.

c. Network and Vault Liquid-Immersed Distribution Transformers

During negotiations, several parties raised the question of whether network, vault, and possibly other types of liquid-immersed transformers should be considered in separate equipment classes. In the 2012 NOPR, DOE considered separating these types of transformers and sought comment from manufacturers on this matter.

In response to the NOPR, many stakeholders commented on separation of network and vault transformers into new equipment classes. Several stakeholders expressed support for separate equipment classes for network and vault transformers, noting that they agreed with the definition put forth by the negotiations working group. (ABB, No. 158 at p. 6; Adams Electrical Coop, No. 163 at p. 2; APPA, No. 191 at p. 6; BG&E, No. 182 at p. 3; BG&E, No. 223 at p. 2; CFCU, No. 190 at p. 1; ConEd, No. 184 at p. 4; EEI, No. 229 at p. 2; KAEC, No. 149 at p. 4; NEMA, No. 146 at p. 67; NEMA, No. 170 at p. 11; NRECA, No. 172 at p. 5; NRECA, No. 228 at pp. 2–3; Power Partners, No. 155 at p. 2) Stakeholders felt that this separate equipment class should have efficiency standards that are unchanged from the levels that have been in effect since January 1, 2010, set in the 2007 final rule. (Cooper, No. 165 at p. 3; Cooper Power Systems, No. 222 at p. 4; EEI, No. 185 at p. 3; NEMA, No. 170 at p. 8; PE, No. 192 at p. 5; Prolec-GE, No. 177 at pp. 7, 12; PE, No. 192 at p. 8)

Many manufacturers noted that network/vault transformers should be separated based on the tight size and space restrictions placed on them. (NEMA, No. 225 at p. 3; Prolec-GE, No. 146 at p. 15; ABB, No. 158 at p. 9) In many cases, manufacturers stated that higher efficiency transformers cannot fit into existing vaults and still maintain required safety and maintenance clearance. (NEMA, No. 170 at p. 3) Stakeholders argued that any increase in size due to increased efficiency standards would eliminate any economic benefit from higher efficiency due to the extremely high costs of modifying existing vault or other underground infrastructure in urban areas. (Adams Electric Coop, No. 163 at p. 2; BG&E, No. 223 at pp. 2–3; ConEd, No. 184 at p. 4; NRECA, No. 172 at p. 3; Pepco, No. 145 at p. 23; ABB, No. 158 at p. 9; Howard Industries, No. 226 at pp. 1–2; APPA, No. 191 at p. 4; Pepco, No. 145 at p. 3; ConEd, No. 236 at pp. 1–2) Others pointed out that expansion of vaults and manholes in city environments is sometimes even physically impossible due to space constraints. (ConEd, No. 184 at p. 4) Howard Industries noted that often American National Standards Institute (ANSI) standards govern the sizes of these types of transformers based on established maximum dimensional constraints due to vault sizing. (HI, No. 151 at p. 3) Prolec-GE commented that the application of these transformers not only requires them to be compact, but also built to a much higher level of ruggedness and durability. (Prolec-GE, No. 238 at pp. 1–2)

Con Edison, who is the largest user of network- and vault-based distribution transformers in the United States, pointed out that while it agrees with separation of network-based transformers, modifications were needed to the definition presented in Appendix 1–A to include transformers purchased by Con Edison, who is the largest user of network- and vault-based distribution transformers in the United States. (ConEd, No. 236 at p. 2)

Other stakeholders noted that while network and vault transformers could experience dimensional problems at higher efficiencies, these problems are diminished at lower levels. Berman Economics notes that ''the *de minimis* increase in efficiency proposed by DOE in this NOPR do not appear to warrant any such special treatment.'' (Berman Economics, No. 150 at p. 21) ASAP agreed, noting that if the final rule efficiency levels stayed as modest as those in the NOPR then separation was not necessary. (ASAP, No. 146 at pp. 66–67)

Multiple stakeholders expressed hesitation about separating vault transformers. Berman Economics recommended that DOE consider a separate class for network transformers only, as the additional electronics and protections required of a networked transformer likely would make it an uneconomic substitute for a non-networked transformer, an argument that could not be made for vault transformers. (Berman Economics, No. 221 at p. 5) Furthermore, Advocates pointed out that vault transformers may be a compliance loophole/risk and, at minimum, nameplate marking that reads ''For installation in a vault only,'' should be required for this equipment. (Advocates, No. 235 at p. 4) Others noted that the idea of vault transformers being used as substitutes for pad-mounted transformers is ''fraught with over-simplifications and faulty assumptions.'' (APPA, No. 237 at pp. 2–3) They believed that substitution would not occur if DOE defined and carved out network and vault transformers per the IEEE definitions. (APPA, No. 237 at pp. 2–3) It was also pointed out that utilities pay as much as two times as much for a vault transformer as for pad-mounted units of similar capacity. (EEI, No. 229 at p. 5)

DOE appreciates the attention and depth of thought given by stakeholders to this nuanced rulemaking issue. At this time, DOE believes that establishing a new equipment class for network and vault based transformers is unnecessary. It is DOE's understanding that there is no technical barrier that prevents network and vault based transformers from achieving the same levels of efficiency as other liquid-immersed distribution transformers. However, DOE does understand that there are additional costs, besides those to the physical transformer, which may be incurred when a replacement transformer is significantly larger than the original transformer and does not allow for the necessary space and maintenance clearances. Rather than establishing a new equipment class, DOE has considered the costs for such vault replacements in the NIA. Please see section X. Therefore, as stated, DOE is not establishing a new equipment class for these transformer types, but may consider doing so in a future rulemaking.

d. BIL Ratings in Liquid-Immersed Distribution Transformers

During negotiations, several parties raised the question of whether liquid-immersed distribution transformers should have standards set according to BIL rating, as do medium-voltage dry-type distribution transformers. (ABB, Pub. Mtg. Tr., No. 89 at p. 218) Other parties responded in response to the NOPR with suggestions about how to address BIL ratings in liquid-immersed distribution transformers. NEMA pointed out that as BIL increases, a greater volume of core material is needed, adding both expense and no-load losses. (NEMA, No. 170 at p. 4) Cooper agreed with separation by BIL, pointing out that ''standards by BIL level will help differentiate transformers that require more insulation and that are less efficient by nature.'' (Cooper, No. 165 at p. 3) Howard Industries opined that it felt 200 kV BIL and higher transformers should have their own category whose efficiency levels were capped at those set in the 2007 Final Rule. It noted that high BIL ratings require additional insulation to meet American National Standards Institute (ANSI) requirements and such additional insulation limits the achievable efficiency for these transformers. (HI, No. 151 at p. 12) Berman Economics supported separation, and commented that DOE could split at 200 kV if these transformers would not be cheaper than 150 BIL transformers at the newly set standard. (Berman Economics, No. 221 at p. 6) BG&E does not purchase 200 kV BIL transformers but supported maintaining the current 2007 Final Rule efficiency levels for these transformers due to construction and weight limitations. (BG&E, No. 223 at p. 2)

Several stakeholders felt that separate standards should be set for all transformers with a BIL of 150 kV or higher. (NRECA, No. 228 at p. 3; Advocates No. 235 at pp. 4–5; EEI, No. 229 at pp. 5–6; APPA, No. 237 at p. 3) Stakeholders who supported a split at 150 kV felt that all transformers with BILs above this level should not have increasing standards in this rule; the standards should remain at efficiency levels set in the 2007 final rule. (NEMA, No. 225 at p. 3–4; Howard Industries, No. 226 at p. 2) Prolec-GE pointed out that a class of only 200 kV and above is of extremely limited volume and provides no benefit, stating that there is a significant step up in cost for higher efficiencies at 150 kV BIL. (Prolec-GE, No. 238 at p. 2) ''To prevent substitution of higher BIL rated transformers as a means of circumventing the efficiency standard, Cooper recommends using coil voltage as a defining criterion for the 150 kV BIL class. Transformers having an insulation system designed to withstand 150 kV BIL and either a line-to-ground or line-to-neutral voltage that is 19 kV (e.g. 34500GY/19920 or 19920 Delta) or greater would be required to qualify as a true 150 kV BIL distribution transformer.'' (Cooper Power Systems, No. 222 at pp. 3–4)

NEMA and KAEC recommended that the efficiency levels proposed in the NOPR be set for liquid-immersed transformers at 95 kV BIL and below only, while all other BILs remain at the current standard. (NEMA, No. 170 at p. 10; KAEC, No. 149 at p. 5) Prolec-GE agreed that the liquid-immersed transformers should be separated at 95 kV BIL and below and above 95 kV. It also suggested that DOE add more design lines for these equipment classes, as it did not believe the scaling was accurate. (Prolec-GE, No. 177 at p. 8) Power Partners commented that there should be several BIL divisions for liquid-immersed distribution transformers and suggested that DOE have equipment classes for the following: 7200/12470Y 95BIL, 14400/2490Y 125BIL, 19920/34500Y 150BIL, and 34500 200 BIL. (Power Partners, No. 155 at p. 3)

Several stakeholders supported the concept of exploring how BIL affects efficiency but felt that it was not a significant enough issue to delay publication of this rule. They proposed that DOE investigate this concept in the next rulemaking. (PE, No. 192 at p. 6; NRECA, No. 172 at p. 6; EEI, No. 185 at p. 8; ComEd, No. 184 at p. 10; BG&E, No. 182 at p. 5; APPA, No. 191 at p. 7) Similarly, ABB commented that at the current proposed levels, ABB does not recommend moving to a separate BIL range for liquid-immersed transformers. If efficiency levels were to increase, ABB would support a change, but did not feel it is warranted with the proposed levels. (ABB, No. 158 at p. 7) HVOLT agreed that at proposed levels, separating by BIL was likely not needed, and pointed out that efficiency impacts of varied BIL were smaller in liquid-immersed transformers than in dry-type transformers. (HVOLT, No. 146 at p. 73)

DOE appreciates all of the input regarding separating standards for different BIL ratings of liquid-immersed distribution transformers. Similar to network- and vault-based transformers, DOE may give strong consideration to establishing equipment classes by BIL rating when considering increased future standards, but does not perceive a strong technological need for such separation at the efficiency levels under consideration in today's rule and does not, therefore, establish separate equipment classes for liquid-immersed distribution transformers by BIL rating.

e. Data Center Transformers

During negotiations, participants noted that data center transformers may experience disproportionate difficulty in achieving higher efficiencies due to certain features that may affect consumer utility. In the NOPR, DOE proposed the definition below for data center transformers and sought comment both on the definition itself, and whether to separate data center transformers into their own equipment class. It noted that separation, the equipment classes must be defined such that it would not be financially advantageous for consumers to purchase data center transformers for general use.

i. Data center transformer means a three-phase low-voltage dry-type distribution transformer that—

(i) is designed for use in a data center distribution system and has a nameplate identifying the transformer as being for this use only;

(ii) has a maximum peak energizing current (or in-rush current) less than or equal to four times its rated full load current multiplied by the square root of 2, as measured under the following conditions—

1. during energizing of the transformer without external devices attached to the transformer that can reduce inrush current;

2. the transformer shall be energized at zero +/− 3 degrees voltage crossing of a phase. Five consecutive energizing tests shall be performed with peak inrush current magnitudes of all phases recorded in every test. The maximum peak inrush current recorded in any test shall be used;

3. the previously energized and then de-energized transformer shall be energized from a source having available short circuit current not less than 20 times the rated full load current of the winding connected to the source; and

4. the source voltage shall not be less than 5 percent of the rated voltage of the winding energized; and

(vii) is manufactured with at least two of the following other attributes:

1. Listed as a Nationally Recognized Testing Laboratory (NRTL), under the Occupational Safety and Health Administration, U.S. Department of Labor, for a K-factor rating greater than K–4, as defined in Underwriters Laboratories (UL) Standard 1561: 2011 Fourth Edition, Dry-Type General Purpose and Power Transformers;

2. temperature rise less than 130°C with class 220 [25] insulation or temperature rise less than 110°C with class 200 [26] insulation;

3. a secondary winding arrangement that is not delta or wye (star);

4. copper primary and secondary windings;

5. an electrostatic shield; or

6. multiple outputs at the same voltage a minimum of 15° apart, which when summed together equal the transformer's input kVA capacity.

Several stakeholders responded to the request for comment on data center transformers. HVOLT agreed with the idea of creating a separate equipment class for data center transformers, but noted that ''the concept of the inrush current held to four times rating is not accurate.'' (HVOLT, No. 146 at p. 65) NEMA and KAEC supported the establishment of a separate equipment class for data center transformers as well as the definition developed by the working group and recommended that the efficiency levels for this new class remain at EL0, which is equivalent to the levels of NEMA's standard TP–1 2002. (NEMA, No. 170, at p. 9; KAEC, No. 149 at p. 4 NEMA, No. 170 at p. 5) ABB agreed, noting that it supported the definition developed by the working group and a separate equipment class for LVDT data center transformers. (ABB, No. 158 at p. 6) Cooper Power supported the definition, and recommended that the efficiency level for these transformers remain at the baseline. (Cooper, no. 165 at p. 3) NRECA noted that few of its members serve data centers and that it does not have any data on load factors and peak responsibility factors for data centers, but pointed to Uptime Institute and Lawrence Berkeley National Laboratories as sources that may have such data available. (NRECA, No. 172 at p. 5) Howard Industries commented that this proposal would not directly affect it or its products and until further information is given it could give no response on whether or, so had not there is a necessity for establishing a separate equipment class at this time. (HI, No. 151 at p. 3) Finally, Cooper power suggested that, if a separate definition for data center transformers is adopted, a 75 percent load level should be used in the test procedure. (Cooper, No. 165 at p. 3)

DOE appreciates the comments received about data center transformers. In today's rule, DOE is not establishing separate equipment classes for data center transformers for several reasons. First, after reviewing the proposed definition with technical experts, DOE has come to believe that not all of the listed clauses in the definition are directly related to efficiency as it would pertain to the specific operating environment of a data center. For example, the requirement for copper windings would seem generally to aid efficiency rather than hinder it. Second, DOE believes that there may be risk of circumvention of standards and that a transformer may be built to satisfy the data center definition without significant added expense. Third, DOE understands that operators of data centers are generally themselves interested in equipment with high efficiencies because they often face large electricity costs. If that were true, they may be purchasing at or above today's standard and be unaffected by the rule. Finally, DOE understands that the most significant technical requirement of data center transformers to be related to inrush current. In the worst possible case, DOE understands that operators of data center transformers can (and perhaps already do) take measures to limit inrush current external to the transformer. For these reasons, DOE is not establishing a separate equipment class for data center transformers in today's rule.

f. Noise and Vibration

Progress Energy recommended to DOE that ''any change in efficiency requirements fully investigates the impact of higher sound levels and/or vibration.'' (PE No, 92 at p. 10) Progress Energy noted that higher sound or vibration levels or both will be of significant concern where users are nearby. (PE, No. 192 at p. 10) Southern California Edison reported that it had experienced ferroresonance issues with amorphous core transformers in the past. Further, it expressed ferroresonance concerns about lower loss designs with M2 core steel. (Southern California Edison, No. 239 at p. 1) However, neither EEI nor APPA were aware of vibration or acoustic noise issues associated with higher efficiency transformers but conceded that, if there were to be ferroresonance issues with higher efficiency transformers, it could impact customer satisfaction, especially in residential areas. (EEI, No. 185 at p. 19; APPA, No. 191 at p. 13–14) Cooper Power Systems

[25] International Electrotechnical Commission Standard 60085 Electrical Insulation—Thermal Evaluation and Designation, *3rd edition, 2004, page 11 table 1.*

[26] International Electrotechnical Commission Standard 60085 Electrical Insulation—Thermal Evaluation and Designation, *3rd edition, 2004, page 11 table 1.*

commented that it did not expect that the new standards as proposed will have any negative effect on performance or increase vibration or acoustic noise. (Cooper, No. 165 at p. 6)

DOE understands that, in certain applications, noise, and vibration, or harshness (NVH) could be especially problematic. However, based on comments, DOE does not believe that NVH concerns would be significant under the efficiency levels proposed and it does not propose to establish equipment classes using NVH as criteria for today's rule. DOE notes that several manufacturers offer technologies that reduce NVH in cases where it may be of unusual concern.

g. Multivoltage Capability

As discussed in section IIII.A, many distribution transformers have primary and secondary windings that may be reconfigured to accommodate multiple voltages. In some configurations, the transformer may operate less efficiently.

NEMA commented that DOE should exclude from further consideration transformers with multiple primary windings, because they are disadvantaged in meeting higher efficiencies. (NEMA, No. 225 at p. 6) On the other hand, Prolec-GE commented that dual voltage distribution transformers should be included and treated the same as high BIL units, and expressed concern about 7200 X 14400 volt transformers where it could be less expensive for a user to purchase the dual voltage unit than to purchase a 14400 volt single voltage unit. Further, Prolec-GE believes that this issue is limited to simpler dual voltage ratings where the ratio of the two primary voltages is exactly 2:1, and that this potential loophole was not intended under the proposed regulations. (Prolec-GE, No. 238 at p. 2)

For the reason outlined in view of this Prolec-GE comment, DOE is not establishing equipment classes by multivoltage capability in today's final rule. Nevertheless, DOE may consider doing so in future rulemakings, or consider modification of the test procedure as discussed in III.A.4, Dual/Multiple-Voltage Primary Windings.

h. Consumer Utility

A primary consideration in establishment of equipment classes is whether or not the equipment under consideration offers differential utility to the consumer. DOE sought comment on the establishment of a number of equipment classes, including pole-mounted, data-center, network/vault-based, and high BIL distribution transformers to explore whether stakeholders believed equipment utility could be affected. ABB commented that the levels proposed in the NOPR were unlikely to reduce equipment performance or utility. (ABB, No. 158 at p. 10)

Although most stakeholder discussion of space-constrained applications centered around network/vault-based distribution transformers, Howard Industries mentioned another compact application—''ranchrunners''—and requested a separate equipment class for such units (HI, No. 151 at p. 5) Based on the limited data submitted, DOE does not understand ranchrunners to be used in applications where even minimal size increases would necessarily trigger great cost increases. Furthermore, DOE does not believe large size or weight increases are likely at the standard levels under consideration. DOE may consider further consideration of the impact of increased size and weight in future rulemakings, but is not establishing separate equipment classes for ranchrunners in today's final rule.

3. Technology Options

The technology assessment provides information about existing technology options to construct more energy-efficient distribution transformers. There are two main types of losses in transformers: No-load (core) losses and load (winding) losses. Measures taken to reduce one type of loss typically increase the other type of losses. Some examples of technology options to improve efficiency include: (1) Higher-grade electrical core steels, (2) different conductor types and materials, and (3) adjustments to core and coil configurations.

In consultation with interested parties, DOE identified several technology options and designs for consideration. These technology options are presented in Table IV.2 Further detail on these technology options can be found in chapter 3 of the final rule TSD.

TABLE IV.2—OPTIONS AND IMPACTS OF INCREASING TRANSFORMER EFFICIENCY

	No-load losses	Load losses	Cost impact
To decrease no-load losses			
Use lower-loss core materials	Lower	No change*	Higher.
Decrease flux density by:			
Increasing core cross-sectional area (CSA)	Lower	Higher	Higher.
Decreasing volts per turn	Lower	Higher	Higher.
Decrease flux path length by decreasing conductor CSA	Lower	Higher	Lower.
Use 120° symmetry in three-phase cores**	Lower	No change	TBD.
To decrease load losses			
Use lower-loss conductor material	No change	Lower	Higher.
Decrease current density by increasing conductor CSA	Higher	Lower	Higher.
Decrease current path length by:			
Decreasing core CSA	Higher	Lower	Lower.
Increasing volts per turn	Higher	Lower	Lower.

* Amorphous core materials would result in higher load losses because flux density drops, requiring a larger core volume.
** Sometimes referred to as a ''hexa-transformer'' design.

HYDRO-Quebec (IREQ) notified DOE that a new iron-based amorphous alloy ribbon for distribution transformers was developed that has enhanced magnetic properties while remaining ductile after annealing. Further, IREQ noted that a distribution transformer assembly using this technology has been developed. (IREQ, No. 10 at pp. 1–2)

In response to the NOPR, HYDRO-Quebec offered more information on their iron-based amorphous alloy ribbon. It noted that it has two technologies to produce this amorphous ribbon: (1) A continuous in-line annealing of an amorphous ribbon moving forward at several meters per second and giving a curved shape to the ribbon that remains flexible afterwards and can easily be wound into a toroidal core with excellent soft magnetic properties, and (2) a new kernel topology for an electrical distribution transformer compromising a magnetic core made by rolling up the flexible annealed amorphous metal ribbon around the coil. (HQ, No. 125 at p. 1) Hydro-Quebec explains that production of this rolled-up-core transformer technology is automated, and the automated continuous production process makes the product cost competitive with foreign production. ''As for Hydro-Quebec's flexible ribbon, the annealing technology is compatible with implementation of compact, high-throughput, automated, and continuous production processes directly at the casting plant and would thereby benefit from the same advantages pertaining to amorphous steels.'' (HQ, No. 125 at p. 2)

DOE understands that Hydro-Quebec and others worldwide are conducting research on cost-effective manufacture of amorphous core transformers, and believes that such efforts may ultimately save energy and economically benefit consumers. At the present, however, DOE does not understand such technology to necessarily enable achievement of higher efficiency levels. Furthermore, DOE did not attempt to model such technology in its engineering analysis because it could not obtain data on what such technology costs when applied at commercial scales.

a. Core Deactivation

As noted previously, core deactivation technology employs the concept that a system of smaller transformers can replace a single, larger transformer. For example, three 25 kVA transformers operating in parallel could replace a single 75 kVA transformer.

DOE understands that winding losses are proportionally smaller at lower load factors, but for any given current, a smaller transformer will experience greater winding losses than a larger transformer. As a result, those losses may be more than offset by the smaller transformer's reduced core losses. As loading increases, winding losses become proportionally larger and eventually outweigh the power saved by using the smaller core. At that point, the control unit (which consumes little power itself) switches on an additional transformer, which reduces winding losses at the cost of additional core losses. The control unit knows how efficient each combination of transformers is for any given loading, and is constantly monitoring the unit's power output so that it will use the optimal number of cores. In theory, there is no limit to the number of transformers that may operate in parallel in this sort of system, but cost considerations would imply there is an optimal number.

In response to the NOPR, Progress Energy noted that the response time of core deactivation systems might impair power quality by increasing the transformer impedance during the initial cycles of motor starting events. (PE, No. 171 at p. 1) DOE spoke with a company that is developing a core deactivation technology. Noting that many dry-type transformers are operated at very low loadings a large percentage of the time (e.g., a building at night), the company seeks to reduce core losses by replacing a single, traditional transformer with two or more smaller units that could be activated and deactivated in response to load demands. In response to load demand changes, a special unit controls the transformers and activates and/or deactivates them in real-time.

Although core deactivation technology has some potential to save energy over a real-world loading cycle, those savings might not be represented in the current DOE test procedure. Presently, the test procedure specifies a single loading point of 50 percent for liquid-immersed and MVDT transformers, and 35 percent for LVDT. The real gain in efficiency for core deactivation technology comes at loading points below the root mean square (RMS) loading specified in the test procedure, where some transformers in the system could be deactivated. At loadings where all transformers are activated, which may be the case at the test procedure loading, the combined core and coil losses of the system of transformers could exceed those of a single, larger transformer. This would result in a lower efficiency for the system of transformers compared to the single, larger transformer.

In response to the NOPR, Progress Energy Carolinas, Inc. commented that core deactivation is not a proven technology and would subject utility customers to lower reliability.

DOE acknowledges that operating a core deactivation bank of transformers instead of a single unit may save energy and lower LCC for certain consumers. At present, however, DOE is adopting the position that each of the constituent transformers must comply with the energy conservation standards under the scope of the rulemaking.

b. Symmetric Core

DOE understands that several companies worldwide are commercially producing three-phase transformers with symmetric cores—those in which each leg of the transformer is identically connected to the other two. The symmetric core uses a continuously wound core with 120-degree radial symmetry, resulting in a triangularly shaped core when viewed from above. In a traditional core, the center leg is magnetically distinguishable from the other two because it has a shorter average flux path to each leg. In a symmetric core, however, no leg is magnetically distinguishable from the other two.

One manufacturer of symmetric core transformers cited several advantages to its design. These include reduced weight, volume, no-load losses, noise, vibration, stray magnetic fields, inrush current, and power in the third harmonic. Thus far, DOE has seen limited cost and efficiency data for only a few symmetric core units from testing done by manufacturers. DOE has not seen any designs for symmetric core units modeled in a software program.

DOE understands that, because of zero-sequence fluxes associated with wye-wye connected transformers, symmetric core designs are best suited to delta-delta or delta-wye connections. While traditional cores can circumvent the problem of zero-sequence fluxes by introducing a fourth or fifth unwound leg, core symmetry makes extra legs inherently impractical. Another way to mitigate zero-sequence fluxes comes in the form of a tertiary winding, which is delta-connected and has no external connections. This winding is dormant when the transformer's load is balanced across its phases. Although symmetric core designs may, in theory, be made tolerant of zero-sequence fluxes by employing this method, this would come at extra cost and complexity.

Using this tertiary winding, DOE believes that symmetric core designs can service nearly all distribution transformer applications in the United States. Most dry-type transformers have a delta connection and would not require a tertiary winding. Similarly, most liquid-immersed transformers serving the industrial sector have a delta connection. These market segments could use the symmetric core design without any modification for a tertiary winding. However, in the United States most utility-operated distribution transformers are wye-wye connected. These transformers would require the tertiary winding in a symmetric core design.

DOE understands that symmetric core designs are more challenging to manufacture and require specialized equipment that is currently uncommon in the industry. However, DOE did not find a reasonable basis to screen this technology option out of the analysis, and is aware of at least one manufacturer producing dry-type symmetric core designs commercially in the United States.

For the preliminary analysis, DOE lacked the data necessary to perform a thorough engineering analysis of symmetric core designs. To generate a cost-efficiency relationship for symmetric core design transformers, DOE made several assumptions. DOE adjusted its traditional core design models to simulate the cost and efficiency of a comparable symmetric core design. To do this, DOE reduced core losses and core weight while increasing labor costs to approximate the symmetric core designs. These adjustments were based on data received from manufacturers, published literature, and through conversations with manufacturers. Table IV.3 indicates the range of potential adjustments for each variable that DOE considered and the mean value used in the analysis.

TABLE IV.3—SYMMETRIC CORE DESIGN ADJUSTMENTS

Range	[Percentage changes]		
	Core losses *W*	Core weight *lb*	Labor hours
Minimum	−0.0	−12.0	+10.0
Mean	−15.5	−17.5	+55.0
Maximum	−25.0	−25.0	+100.0

DOE applied the adjustments to each of the traditional three-phase transformer designs to develop a cost-efficiency relationship for symmetric core technology. DOE did not model a tertiary winding for the wye-wye connected liquid-immersed design lines (DLs). Based on its research, DOE believes that the losses associated with the tertiary winding may offset the benefits of the symmetric core design and that the tertiary winding will add cost to the design. Therefore, DOE modeled symmetric core designs for the three-phase liquid-immersed design lines without a tertiary winding to examine the impact of symmetric core technology on the subgroup of applications that do not require the tertiary winding.

DOE attempts to consider all designs that are technologically feasible and practicable to manufacture and believes that symmetric core designs can meet these criteria. However, DOE was not able to obtain or produce sufficient data to modify its analysis of symmetric cores after the preliminary analysis. For this reason, DOE did not consider symmetric core designs as part of the NOPR analysis.

In response to the NOPR, several manufacturers expressed support for excluding symmetric core designs from DOE's analysis. ComEd, EEI, Progress Energy, NRECA, and APPA all commented that they were pleased to see symmetric core designs excluded from the NOPR analysis. (ComEd, No. 184 at p. 11; EEI, No. 185 at p. 9; APPA, No. 191 at p. 9; PE, No. 192 at p. 7; NRECA, No. 172 at p. 7) BG&E recommended that symmetric core designs not be included in the final rule based on previous comments that highlighted significant issues with the proposed designs. (BG&E, No. 182 at p. 5) Cooper Power pointed out that symmetric core designs have not proven themselves in the market place, and therefore should be excluded in terms of their technological feasibility. (Cooper, No. 165 at p. 4) Similarly, Prolec-GE saw many issues with the use of symmetric core in medium-voltage liquid-filled transformers, and did not believe that this technology offered benefits. (Prolec-GE, No. 177 at p. 10)

ABB and NEMA both observed that any information regarding symmetric core technology for distribution transformers is currently considered strategic and proprietary and cannot be entered into the public record at this time. (ABB, No. 158 at p. 7) NEMA argued further that while it is important for DOE to understand the potential of emerging technologies, such technologies should not be introduced into the regulation until they have proven themselves in the marketplace; symmetric core designs are currently of low penetration in the industry and have not been proven to offer potential for efficiency improvement. (NEMA, No. 170 at p. 11)

Howard Industries commented that symmetric core technology is not appropriate for the majority of the U.S. distribution transformer market, noting that this style of design results in much deeper tanks and larger pads as well as a new winding configuration. It also pointed out that symmetric core designs are patented by Hexaformer AB, in Sweden, and manufacturing this technology requires a license from Hexaformer. Overall, they feel that the cost to adapt to this technology would be large, impractical, and time consuming. (HI, No. 151 at p. 12) Progress Energy Carolinas, Inc. concurred with Howard Industries that the winding configuration for symmetric core designs would be problematic. They pointed out that the delta tertiary winding needed will be subject to thermal failure, and increase the losses of the transformer. Furthermore, they pointed out that the presence of a delta tertiary winding on a wye-wye three-phase distribution transformer will provide a source for zero-sequence currents to ground faults on the source distribution system, resulting in backfeed and, consequently, a potentially hazardous situation. (PE, No. 171 at p. 1)

Finally, Schneider Electric asserted that the efficiency levels proposed in the NOPR are not high enough to lead manufacturers to evaluate symmetric core technology. It commented that, to fully explore these and other technologies, the implementation time and efficiency levels must be increased. It was Schneider Electric's opinion that further, increasing the levels in small increments and only giving four years to transition does not allow for proper research and development to be completed to properly comment on any new technology. (Schneider, No. 180 at p. 5)

In response to the NOPR, DOE did not receive any data that would force reconsideration of the symmetric core analysis conducted during the preliminary analysis. Stakeholders expressed support for the exclusion of this technology from the NOPR analysis. For all of the above reasons, DOE does not consider symmetric core designs as part of the final rule analysis.

c. Intellectual Property

In setting standards, DOE seeks to analyze the efficiency potentials of commercially available technologies and working prototypes, as well as the availability of those technologies to the market at-large. If certain market participants own intellectual property that enables them to reach efficiencies that other participants practically cannot, amended standards may reduce the competitiveness of the market.

In the case of distribution transformers, stakeholders have raised potential intellectual property concerns surrounding both symmetric core technology and amorphous metals in particular. DOE currently understands that symmetric core technology itself is not proprietary, but that one of the more commonly employed methods of production is the property of the Swedish company Hexaformer AB. However, Hexaformer AB's method is not the only one capable of producing symmetric cores. Moreover, Hexaformer AB and other companies owning intellectual property related to the manufacture of symmetric core designs have demonstrated an eagerness to license such technology to others that are using it to build symmetric core transformers commercially today.

DOE understands that symmetric core technology may ultimately offer a lower-cost path to higher efficiency, at least in certain applications, and that few symmetric cores are produced in the United States. However, DOE notes again that it has been unable to secure data that are sufficiently robust for use as the basis for an energy conservation standard, but encourages interested parties to submit data that would assist in DOE's analysis of symmetric core technology in future rulemakings.

d. Core Construction Technique

DOE examines a number of core construction techniques in its engineering analysis, including butt-lapping, full mitering, step-lap mitering, and distributed gap wound construction. Particularly in the low-voltage dry-type market, where some smaller manufacturers may not own large mitering machines, core construction methodology is of concern. In the NOPR, DOE did not examine butt-lapped core construction as a design option for design line 7 for steel grades above M6 and, as a result, found only butt-lapped designs are feasible through EL 2. Since the NOPR, however, DOE has reassessed the assumption that butt-lapping is not possible beyond EL 2. For design lines 6 and 8, the topic of butt-lapping is less consequential. All of DOE's design line 6 analysis is centered around butt-lapping,[27] while the use of mitering for larger LVDT units (represented by design line 8) is prevalent in both the market and DOE's analysis.

DOE received several comments on core construction method as it relates to design line 7. During the negotiated rulemaking, ASAP commented that DOE should further explore whether butt-lapping was possible beyond EL 2. (ASAP, No. 146 at p. 135, pp. 25–26) HVOLT, a power and distribution transformer consulting company, commented that butt-lapping could probably get very close to EL 3, but not be the most cost competitive choice at that level. (HVOLT, No. 146 at p. 135) ASAP also commented that DOE should explore more design options in the interest of creating a smoother curve, and that butt-lapped options should be among them. (ASAP, No. 146 at pp. 24–25)

In response to the NOPR, ASAP, two manufacturers of LVDTs, and California Investor-Owned Utilities urged DOE to reconsider the technological assumptions (including butt-lapping capabilities at higher TSLs) behind its TSL 1 proposal. ASAP stated that it believed a more careful consideration of the record and a more thorough investigation of the impacts on small, domestic manufacturers would lead DOE to TSL 3, noting that many manufacturers supported at least TSL 2 during the negotiated rulemaking and believed that TSL 2 could be attained using butt-lapping. (ASAP, No. 186 at pp. 3, 7–8) Eaton generally recommended that DOE standardize efficiency levels to EL 3 (i.e., NEMA Premium®), stating that such efficiency levels are realistic using current technology and are very close to the standards DOE proposed in the NOPR. (Eaton, No. 157 at p. 2) The California IOUs commented that DOE should revise its analysis to reflect that core construction techniques are currently used to produce efficiencies higher than TSL 1 for both small and large manufacturers. (CA IOUs, No. 189 at p. 2) The group of utilities also stated that NEMA lists 11 manufacturers committed to delivering LVDTs at NEMA Premium® efficiency levels, including both large and small manufacturers. (CA IOUs, No. 189 at p. 2) Schneider Electric reiterated its support of efficiency levels higher than those proposed in the NOPR. (Schneider, No. 180 at p. 1)

DOE understands that the ability to produce transformers using a variety of construction techniques is important to preserving design flexibility. After receiving the above-referenced comments on the NOPR, DOE consulted with technical design experts and learned that butt-lapping is technologically feasible for DL 7 through EL 3. DOE revises its understanding of the limits of butt-lapped core construction in today's rule to extend through EL 3 in DL 7.

B. Screening Analysis

DOE uses the following four screening criteria to determine which design options are suitable for further consideration in a standards rulemaking:

1. *Technological feasibility.* Technologies incorporated in commercial products or in working prototypes will be considered to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standards, then that technology will be considered practicable to manufacture, install, and service.

3. *Impacts on product utility to consumers.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or 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 be considered further.

4. *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further. (10 CFR part 430, subpart C, appendix A)

In the preliminary analysis, DOE identified the technologies for improving distribution transformer efficiency that were under consideration. DOE developed this initial list of design options from the technologies identified in the technology assessment. Then DOE reviewed the list to determine if the

[27] Except for the amorphous design options, because DOE eliminates consideration of amorphous cores in butt-lapped and other stacked configurations in its screening analysis.

design options are practicable to manufacture, install, and service; would adversely affect equipment utility or equipment availability; or would have adverse impacts on health and safety. In the engineering analysis, DOE only considered those design options that satisfied the four screening criteria. The design options that DOE did not consider because they were screened out are summarized in Table IV.4.

TABLE IV.4—DESIGN OPTIONS SCREENED OUT OF THE ANALYSIS

Design option excluded	Eliminating screening criteria
Silver as a Conductor Material	Practicability to manufacture, install, and service.
High-Temperature Superconductors	Technological feasibility; Practicability to manufacture, install, and service.
Amorphous Core Material in Stacked Core Configuration	Technological feasibility; Practicability to manufacture, install, and service.
Carbon Composite Materials for Heat Removal	Technological feasibility.
High-Temperature Insulating Material	Technological feasibility.
Solid-State (Power Electronics) Technology	Technological feasibility; Practicability to manufacture, install, and service.
Nanotechnology Composites	Technological feasibility.

Chapter 4 of the TSD discusses each of these screened-out design options in more detail. The chapter also includes a list of emerging technologies that could impact future distribution transformer manufacturing costs.

1. Nanotechnology Composites

DOE is aware that materials science research is being conducted into the use of nanoscale engineering to improve certain properties of materials used in transformers. Nanotechnology is the manipulation of matter on an atomic and molecular scale. Such materials have small-scale structures created through novel manufacturing techniques that may give rise to improved properties (e.g., higher resistivity in steel) not natively present in the bulk material. At present, DOE has not learned of any such materials that meet DOE's criteria of being practicable to manufacture and does not consider nanotechnology composites in its engineering analysis.

Many stakeholders were supportive of DOE's decision to exclude nanotechnology from their analysis in the NOPR. Howard Industries and Cooper Power both expressed that nanotechnology is not a proven technology in the field of distribution transformers; nanotechnology is still in the research phase and further development would be required prior to being viable in the distribution transformer field. (HI, No. 151 at p. 12; Cooper, No. 165 at p. 4) Prolec-GE agreed, pointing out that this technology is ''still in its infancy and there is not enough public information to make a practicable analysis if benefits exist.'' (Prolec-GE, No. 177 at p. 11) While NRECA, EEI and APPA all expressed interest in the development of advanced technologies that could result in more efficient transformers, they agree with the above stakeholders that this technology is not currently available for distribution transformers. (NRECA, No. 172 at p. 7; APPA, no. 191 at p. 9; EEI, No. 185 at p. 9; BG&E, No. 182 at p. 5) ComEd and Progress Energy noted that, due to lack of availability, nanotechnology composites should not be included in DOE's final rule. (ComEd, No. 184 at p. 11; PE, No. 192 at p. 7)

Stakeholders also noted that information on nanotechnology is not currently readily available. ABB pointed out that any information regarding the application and design of nanotechnology in distribution transformers is considered strategic and proprietary and that these composites are not currently commercially available in the distribution transformer market. (ABB, No. 158 at p. 7) NEMA agreed, stating, ''this technology is in its infancy. Information regarding an individual manufacturer's application of this technology is considered strategic and proprietary and cannot be divulged in the public record at this time.'' (NEMA, No. 170 at p. 11)

DOE understands that the nanotechnology field is actively researching ways to produce bulk material with desirable features on a molecular scale. Some of these materials may have high resistivity, high permeability, or other properties that make them attractive for use in electrical transformers. DOE knows of no current commercial efforts to employ these materials in distribution transformers and no prototype designs using this technology. Therefore, DOE does not consider nanotechnology composites in the today's rulemaking.

C. Engineering Analysis

The engineering analysis develops cost-efficiency relationships for the equipment that are the subject of a rulemaking by estimating manufacturer costs of achieving increased efficiency levels. DOE uses manufacturing costs to determine retail prices for use in the LCC analysis and MIA. In general, the engineering analysis estimates the efficiency improvement potential of individual design options or combinations of design options that pass the four criteria in the screening analysis. The engineering analysis also determines the maximum technologically feasible (''max-tech'') energy efficiency level.

DOE must consider those distribution transformers that are designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines to be technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Therefore, an important role of the engineering analysis is to identify the maximum technologically feasible efficiency level. The maximum technologically feasible level is one that can be reached by adding efficiency improvements and/or design options, both commercially feasible and in prototypes, to the baseline units. DOE believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in a prototype form to be considered technologically feasible.

In general, DOE can use three methodologies to generate the manufacturing costs needed for the engineering analysis. These methods are:

(1) The design-option approach—reporting the incremental costs of adding design options to a baseline model;

(2) the efficiency-level approach—reporting relative costs of achieving improvements in energy efficiency; and

(3) the reverse engineering or cost assessment approach—involving a ''bottom up'' manufacturing cost

assessment based on a detailed bill of materials derived from transformer teardowns.

DOE's analysis for this rulemaking is based on the design-option approach, in which design software is used to assess the cost-efficiency relationship between various design option combinations. This is the same approach that was taken in the 2007 final rule for distribution transformers.

1. Engineering Analysis Methodology

When developing its engineering analysis for distribution transformers, DOE divided the covered equipment into equipment classes. As discussed, distribution transformers are classified by insulation type (liquid immersed or dry type), number of phases (single or three), primary voltage (low voltage or medium voltage for dry-type distribution transformers) and basic impulse insulation level (BIL) rating (for dry types). Using these transformer design characteristics, DOE developed ten equipment classes. Within each of these equipment classes, DOE further classified distribution transformers by their kilovolt-ampere (kVA) rating. These kVA ratings are essentially size categories, indicating the power handling capacity of the transformers. For DOE's rulemaking, there are over 100 kVA ratings across all ten equipment classes.

DOE recognized that it would be impractical to conduct a detailed engineering analysis on all kVA ratings, so it sought to develop an approach that simplified the analysis while retaining reasonable levels of accuracy. DOE consulted with industry representatives and transformer design engineers to develop an understanding of the construction principles for distribution transformers. It found that many of the units share similar designs and construction methods. Thus, DOE simplified the analysis by creating engineering design lines (DLs), which group kVA ratings based on similar principles of design and construction. The DLs subdivide the equipment classes in order to improve the accuracy of the engineering analysis. These DLs differentiate the transformers by insulation type (liquid immersed or dry type), number of phases (single or three), and primary insulation levels for medium-voltage dry-type distribution transformers (three different BIL levels).

After developing its DLs, DOE then selected one representative unit from each DL for study, greatly reducing the number of units for direct analysis. For each representative unit, DOE generated hundreds of unique designs by contracting with Optimized Program Services, Inc. (OPS), a software company specializing in transformer design since 1969. The OPS software used three primary inputs that it received from DOE: (1) A design option combination, which included core steel grade, primary and secondary conductor material, and core configuration; (2) a loss valuation combination; and (3) material prices. For each representative unit, DOE examined anywhere from 8 to 16 design option combinations and for each design option combination, the OPS software generated 518 designs based on unique loss valuation combinations. These loss valuation combinations are known in industry as A and B evaluation combinations and represent a customer's present value of future losses in a transformer core and winding, respectively. For each design option combination and A and B combination, the OPS software generated an optimized transformer design based on the material prices that were also part of the inputs. Consequently, DOE obtained thousands of transformer designs for each representative unit. The performance of these designs ranged in efficiency from a baseline level, equivalent to the current distribution transformer energy conservation standards, to a theoretical max-tech efficiency level.

After generating each design, DOE used the outputs of the OPS software to help create a manufacturer selling price (MSP). The material cost outputs of the OPS software, along with labor estimates, were marked up for scrap factors, factory overhead, shipping, and non-production costs to generate a MSP for each design. Thus, DOE obtained a cost versus efficiency relationship for each representative unit. Finally, after DOE had generated the MSPs versus efficiency relationship for each representative unit, it extrapolated the results to the other, unanalyzed, kVA ratings within that same engineering design line.

PEMCO commented that DOE generated too many designs, and that many were impractical or unlikely to sell. (PEMCO, No. 183 at p. 1) EMS Consulting made an opposite remark, that DOE's chosen methodology omits many possible solutions. (EMS, No. 178 at p. 5) Finally, NEMA commented that the "steepness" of some of DOE's curves were lower than was shown by some manufacturers, ABB in particular. (NEMA, No. 170 at p. 4, p. 3) In other words, NEMA questioned whether cost might rise more quickly with efficiency than DOE's analysis suggested. Conversely, ATI Allegheny commented that DOE did excellent work on the engineering analysis. (ATI, No. 181 at p. 1)

DOE acknowledges both that it may not have analyzed every possible design and that, conversely, some designs would be unlikely to be considered by many purchasers, but notes that the goal of the engineering analysis is to both explore the limits of design possibility and establish a cost/efficiency behavior. The Life-Cycle Cost and Payback Period Analysis, in turn, examines which of the designs would be cost-effective for individual purchasers. It would not be practical to attempt to analyze every possible physical design. Regarding NEMA's comments, DOE is always seeking constructive feedback to aid in the accuracy of its engineering analysis, but cautions that comparisons between designs must be made carefully in order to be sure that they remain valid across a wide variety of market forces and construction techniques. A manufacturer's cost of producing higher-efficiency units in today's market may be different than the cost of meeting those same efficiencies after establishment of energy conservation standards, which may lead to production at higher volumes.

2. Representative Units

For the preliminary analysis, DOE analyzed 13 DLs that cover the range of equipment classes within the distribution transformer market. Within each DL, DOE selected a representative unit to analyze in the engineering analysis. A representative unit is meant to be an idealized unit typical of those used in high volume applications.

In view of comments received from stakeholders throughout the analysis period, DOE slightly modified its representative units for the NOPR analysis. For the NOPR, DOE analyzed the same 13 representative units as in the preliminary analysis, but also added a design line, and therefore representative unit, by splitting the former design line 13 into two new design lines, 13A and 13B. This new representative unit allows DOE's analysis to better reflect the behavior of high kVA, high BIL medium-voltage dry-type units and is shown in Table IV.5. The representative units selected by DOE were chosen because they comprise high volume segments of the market for their respective design lines and also provide, in DOE's view, a reasonable basis for scaling to the unanalyzed kVA ratings. DOE chooses certain designs to analyze as representative of a particular design line or design lines because it is impractical to analyze all possible designs in the scope of coverage for this rulemaking.

DOE also notes that as a part of the negotiations process, DOE worked directly with multiple interested parties to develop a new scaling methodology for the NOPR that addresses some of the interested party concerns regarding scaling.

TABLE IV.5—ENGINEERING DESIGN LINES (DLS) AND REPRESENTATIVE UNITS FOR NOPR ANALYSIS

EC *	DL	Type of distribution transformer	kVA range	Representative unit for this engineering design line
1	1	Liquid-immersed, single-phase, rectangular tank.	10–167	50 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 240/120V secondary, rectangular tank, 95kV BIL.
	2	Liquid-immersed, single-phase, round tank.	10–167	25 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 120/240V secondary, round tank, 125 kV BIL.
	3	Liquid-immersed, single-phase	250–833	500 kVA, 65 °C, single-phase, 60Hz, 14400V primary, 277V secondary, 150kV BIL.
2	4	Liquid-immersed, three-phase	15–500	150 kVA, 65 °C, three-phase, 60Hz, 12470Y/7200V primary, 208Y/120V secondary, 95kV BIL.
	5	Liquid-immersed, three-phase	750–2500	1500 kVA, 65 °C, three-phase, 60Hz, 24940GrdY/14400V primary, 480Y/277V secondary, 125 kV BIL.
3	6	Dry-type, low-voltage, single-phase	15–333	25 kVA, 150 °C, single-phase, 60Hz, 480V primary, 120/240V secondary, 10kV BIL.
4	7	Dry-type, low-voltage, three-phase	15–150	75 kVA, 150 °C, three-phase, 60Hz, 480V primary, 208Y/120V secondary, 10kV BIL.
	8	Dry-type, low-voltage, three-phase	225–1000	300 kVA, 150 °C, three-phase, 60Hz, 480V Delta primary, 208Y/120V secondary, 10kV BIL.
6	9	Dry-type, medium-voltage, three-phase, 20–45kV BIL.	15–500	300 kVA, 150 °C, three-phase, 60Hz, 4160V Delta primary, 480Y/277V secondary, 45kV BIL.
	10	Dry-type, medium-voltage, three-phase, 20–45kV BIL.	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 4160V primary, 480Y/277V secondary, 45kV BIL.
8	11	Dry-type, medium-voltage, three-phase, 46–95kV BIL.	15–500	300 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
	12	Dry-type, medium-voltage, three-phase, 46–95kV BIL.	750–2500	1500 kVA, 150 °C, three-phase, 60Hz, 12470V primary, 480Y/277V secondary, 95kV BIL.
10	13A	Dry-type, medium-voltage, three-phase, 96–150kV BIL.	75–833	300 kVA, 150 °C, three-phase, 60Hz, 24940V primary, 480Y/277V secondary, 125kV BIL.
	13B	Dry-type, medium-voltage, three-phase, 96–150kV BIL.	225–2500	2000 kVA, 150 °C, three-phase, 60Hz, 24940V primary, 480Y/277V secondary, 125kV BIL.

* EC means equipment class (see Chapter 3 of the TSD). DOE did not select any representative units from the single-phase medium-voltage equipment classes (EC5, EC7 and EC9), but calculated the analytical results for EC5, EC7, and EC9 based on the results for their three-phase counterparts.

3. Design Option Combinations

There are many different combinations of design options that could be considered for each representative unit DOE analyzes. While DOE cannot consider all the possible combinations of design options, DOE attempts to select design option combinations that are common in the industry while also spanning the range of possible efficiencies for a given DL. For each design option combination chosen, DOE evaluates 518 designs based on different A and B factor[28] combinations. For the engineering analysis, DOE reused many of the design option combinations that were analyzed in the 2007 final rule for distribution transformers. 72 FR 58190 (October 12, 2007).

For the preliminary analysis, DOE considered a design option combination that uses an amorphous steel core for each of the dry-type design lines, whereas DOE's 2007 final rule did not consider amorphous steel designs for the dry-type design lines. Instead, DOE had considered H–0 domain refined (H–0 DR) steel as the maximum-technologically feasible design. However, DOE is aware that amorphous steel designs are now used in dry-type distribution transformers. Therefore, DOE considered amorphous steel designs for each of the dry-type transformer design lines in the preliminary analysis.

During preliminary interviews with manufacturers, DOE received comment that it should consider additional design option combinations using aluminum for the primary conductor rather than copper. While manufacturers commented that copper is still used for the primary conductor in many distribution transformers, they noted that aluminum has become relatively more common. This is due to the relative prices of copper and aluminum. In recent years, copper has become even more expensive compared to aluminum.

DOE also noted that certain design lines were lacking a design to bridge the efficiency values between the lowest efficiency amorphous designs and the next highest efficiency designs. In an effort to close that gap for the preliminary analysis, DOE evaluated ZDMH and M2 core steel as the highest efficiency designs below amorphous for the liquid-immersed design lines. Similarly, DOE evaluated H–0 DR and M3 core steel as the highest efficiency designs below amorphous for dry-type design lines.

DOE incorporated these supplementary designs into the reference case (i.e., DOE's default set of assumptions without any sensitivity analysis) for the NOPR analysis. Additionally, DOE aimed to consider the most popular design option combinations, and the design option combinations that yield the greatest improvements in efficiency. While DOE was unable to consider all potential design option combinations, it did consider multiple designs for each representative unit and considered additional design options in its NOPR analysis based on stakeholder comments.

As for wound core designs, DOE did consider analyzing them for all of its dry-type representative units that are

[28] A and B factors correspond to loss valuation and are used by DOE to generate distribution transformers with a broad range of performance and design characteristics.

300 kVA or less in the NOPR. However, based on limited availability in the United States, DOE did not believe that it was feasible to include these designs in their final engineering results. For similar availability reasons, DOE chose to exclude its wound core ZDMH and M3 designs from its low-voltage dry-type analysis. Based on how uncommon these designs are in the current market, DOE believes that it would be unrealistic to include them in engineering curves without major adjustments.

DOE did not consider wound core designs for DLs 10, 12, and 13B because they are 1500 kVA and larger. DOE understands that conventional wound core designs in these large kVA ratings will emit an audible ''buzzing'' noise, and will experience an efficiency penalty that grows with kVA rating such that stacked core is more attractive. DOE notes, however, that it does consider a wound core amorphous design in each of the dry-type design lines.

DOE did opt to add two design option combinations that incorporate M-grade steels that have become popular choices at the current standard levels. For all medium-voltage dry-type design lines (9–13B), DOE added a design option combination of an M4 step-lap mitered core with aluminum primary and secondary windings. For design line 8, DOE added a design option combination of an M6 fully mitered core with aluminum primary and secondary windings. DOE understands both combinations to be prevalent baseline options in the present transformer market.

For the NOPR analysis, DOE also made the decision to remove certain high flux density designs from DL7 to be consistent with designs submitted by manufacturers.[29] There is a variety of reasons that manufacturers would choose to limit flux density (e.g., vibration, noise). Further detail on this change can be found in chapter 5 of the TSD. The design remains that way for today's final rule.

In response to the NOPR, Eaton noted that this rule provides many design options, and allows for the use of various designs and different grades of steel, but encouraged DOE to standardize the efficiency levels to NEMA Premium® (i.e., EL 3). (Eaton, No. 157 at p. 2) Although Schneider supported the LVDT efficiency levels proposed by DOE in the NOPR, the company stated in its NOPR comments that it still supports efficiency levels higher than those proposed in the NOPR (as evidenced by discussions during the negotiated rulemaking meetings.) (Schneider, No. 180 at p. 1)

ASAP commented that it perceived there to be a ''gap'' in the DL 7 data, and that DOE should seek to fill that gap by exploring other design option combinations corresponding to butt-lapped core construction. (ASAP, No. 146 at p. 24–25, 135) In response, DOE first generated analysis for two additional design option combinations: An M4 core with aluminum windings and an M3 core with copper windings. DOE includes both sets of results in its final rule engineering analysis. In general, DOE notes that preservation of a number of design options was a strong consideration in selection of the final standard. Second, given these two new design lines discussed above, DOE revisited the question of whether DL 7 for LVDTs was achievable by manufacturers with butt lapping techniques in order to avoid purchasing mitering equipment. Specifically, DOE consulted with technical design experts, and they confirmed butt-lapping was technically feasible through EL 3. In addition, as detailed in section IV.A.3, DOE received public comment supporting this conclusion and did not receive public comments directly refuting this conclusion. (See, e.g., ASAP, No. 186 at pp. 3, 7–8; Eaton, No. 157 at p. 2; CA IOUs, No. 189 at p. 2)

Consequently, DOE modified the LVDT standard proposed from TSL 1 to TSL 2 in today's final rule.

DL 7 analysis illustrating the possibility of constructing butt-lapped cores at EL3 led DOE to reconsider the impacts to small manufacturers. DOE originally assumed that a small manufacturer without the equipment needed to construct mitered cores would have to either invest in such equipment at considerable expense, source cores from a third party, or exit that market. As explained in Section IV.I.1, DOE calculates the net present value of the industry (''INPV'') in attempting to quantify impacts to manufacturers under different scenarios. During the NOPR, DOE calculated LVDT INPV to be between $200 million and $235 million (in 2011$). In today's final rule, that figure rises to $227 million to $249 million (in 2011$).

In addition, as described in the NOPR and as DOE confirmed for the final rule, DOE understands that the majority of the LVDT market volume is currently imported, much of it from large, well-capitalized manufacturers in Mexico. Furthermore, many small businesses operating inside the United States cater to niches outside of DOE's scope of coverage, and would not be directly affected by the rule. Finally, DOE spoke with several small domestic manufacturers and learned that some are already able to miter cores, and would make the decision to butt-lap or miter at EL3 based on economics and without facing large capital investment decisions. More detail can be found in Section IV.I.5.b.

4. A and B Loss Value Inputs

As discussed, one of the primary inputs to the OPS software is an A and B combination for customer loss evaluation. In the preliminary analysis, DOE generated each transformer design in the engineering analysis based upon an optimized lowest total owning cost evaluation for a given combination of A and B values. Again, the A and B values represent the present value of future core and coil losses, respectively and DOE generated designs for over 500 different A and B value combinations for each of the design option combinations considered in the analysis.

DOE notes that the designs created in the engineering analysis span a range of costs and efficiencies for each design option combination considered in the analysis. This range of costs and efficiencies is determined by the range of A and B factors used to generate the designs. Although DOE does not generate a design for every possible A and B combination, because there are infinite variations, DOE believes that its 500-plus combinations have created a sufficiently broad design space. By using so many A and B factors, DOE is confident that it produces the lowest first cost design for a given efficiency level and also the lowest total owning cost design. Furthermore, although all distribution transformer customers do not purchase based on total owning cost, the A and B combination is still a useful tool that allows DOE to generate a large number of designs across a broad range of efficiencies and costs for a particular design line. Finally, OPS noted at the public meeting that its design software requires A and B values as inputs. (OPS, Pub. Mtg. Tr., No. 34 at p. 123) For all of these reasons, DOE continued to use A and B factors from the NOPR to generate the range of designs for the final rule engineering analysis.

5. Materials Prices

In distribution transformers, the primary materials costs come from electrical steel used for the core and the aluminum or copper conductor used for

[29] During the negotiations process, DOE's subcontractor, Navigant Consulting, Inc. (Navigant), participated in a bidirectional exchange of engineering data with industry representatives in an effort to validate the OPS designs generated for the engineering analysis.

the primary and secondary winding. As these are commodities whose prices frequently fluctuate throughout a year and over time, DOE attempted to account for these fluctuations by examining prices over multiple years. For the preliminary analysis, DOE conducted the engineering analysis analyzing materials price information over a five-year time period from 2006–2010, all in constant 2010$. Whereas DOE used a five-year average price in the 2007 final rule for distribution transformers, for the preliminary analysis in this rulemaking, DOE selected one year from its five-year time frame as its reference case, namely 2010. Additionally, DOE considered high and low materials price sensitivities from that same five-year time frame, 2008 and 2006 respectively.

DOE decided to use current (2010) materials prices in its analysis for the preliminary analysis because of feedback from manufacturers during interviews. Manufacturers noted the difficulty in choosing a price that accurately projects future materials prices due to the recent variability in these prices. Manufacturers also commented that the previous five years had seen steep increases in materials prices through 2008, after which prices declined as a result of the global economic recession. Further detail on these factors can be found in appendix 3A. Due to the variability in materials prices over this five-year timeframe, manufacturers did not believe a five-year average price would be the best indicator, and recommended using the current materials prices.

To estimate its materials prices, DOE spoke with manufacturers, suppliers, and industry experts to determine the prices paid for each raw material used in a distribution transformer in each of the five years between 2006 and 2010. While prices fluctuate during the year and can vary from manufacturer to manufacturer depending on a number of variables, such as the purchase quantity, DOE attempted to develop an average materials price for the year based on the price a medium to large manufacturer would pay.

With the onset of the negotiations, DOE was presented with an opportunity to implement a 2011 materials price case based on data it had gathered before and during the negotiation proceedings. Relative to the 2010 case, the 2011 prices were lower for all steels, particularly M2 and lower grade steels.

For the NOPR, DOE reviewed its materials prices during interviews with manufacturers and industry experts and revised its materials prices for copper and aluminum conductors. DOE derived these prices by adding a processing cost increment to the underlying index price. DOE determined the current 2011 index price from the LME and COMEX, two well-known commodities benchmarks. These indices only had current 2011 values available, so DOE used the producer price index for copper and aluminum to convert the 2011 index price into prices for the time period of 2006–2010. DOE then applied a unique processing cost adder to the index price for each of its conductor groupings. To derive the adder price, DOE compared the difference in the LME index price to the 2011 price paid by manufacturers, and applied this difference to the index price in each year. DOE inquired with many manufacturers, both large and small, to derive these prices. Materials price cases for the final rule are identical to those of the NOPR. Further detail can be found in chapter 5 of the TSD.

DOE reviewed core steel prices with manufacturers and industry experts and found them to be accurate within the range of prices paid by manufacturers in 2010. However, based on feedback in negotiations, DOE adjusted steel prices for M4 grade steels and lower grade steels.

Several stakeholders commented on the material prices used in the NOPR. ABB, NRECA, and NEMA all noted that the material costs appeared to be too low, both for 2010 and 2011. (ABB, No. 158 at pp. 7–8; NEMA, No. 170 at p. 11; NRECA, No. 146 at p. 159) Similarly, Prolec-GE pointed out that, as the economy recovers, demand for these materials will increase, as will their prices. They agreed that DOE's material price projections were too low. (Prolec-GE, No. 177 at p. 11) ATI specifically noted that DOE's price for M3 steel was too low in the 2011 price scenario, and commented that this price is a very important one in the analysis. (ATI, No. 146 at pp. 74–75) Progress Energy concurred, noting that the price of silicon core steel in DOE's analysis was lower than actual prices, and recommended that DOE revise all their material prices. (PE, No. 192 at p. 7) Cooper and HI agreed with these stakeholders that DOE's material prices were too low, specifically pointing out that surcharges need to be included to more accurately reflect real world prices. (Cooper, No. 165 at p. 4; HI, No. 151 at p. 12)

APPA did not disagree with DOE's material prices, but pointed out that if DOE choose to update them, they should update wholesale electric prices to the most recent year available as well. (APPA, No. 191 at p. 9) BG&E and ComEd agreed, pointing out ''base costs, for both material and wholesale energy, should reflect from the most recent published data for the most recent year.'' (BG&E No. 182 at p. 5; ComEd, No. 184 at p. 11) ASAP commented that DOE should re-optimize its engineering analysis with respect to the new pricing to find the most accurate results. (ASAP, No. 146 at p. 153)

DOE notes that because it analyzes such a large breadth of designs, its engineering analysis is less sensitive to changes in materials prices than it otherwise would be. DOE performed a sensitivity analysis during the preliminary analysis phase of the rulemaking in order to understand the magnitude of the effect of a change in material prices and found it to be very small. The differential pricing between the designs, upon which the LCC, NIA, and other economics results are based, are even less sensitive. DOE believes its conclusions would not vary between either case.

DOE appreciates the above-listed feedback from commenters, however, for today's rule, DOE continues to use the 2010 and 2011 materials prices that were first included in the NOPR as reference case scenarios, which is the most recent and accurate information available to DOE. DOE presents both cases as recent examples of how the steel market fluctuates and uses both to derive economic results. It also considered high and low price scenarios based on the 2008 and 2006 materials prices, respectively, but adjusted the prices in each of these years to consider greater diversity in materials prices. For the high price scenario, DOE increased the 2008 prices by 25 percent, and for the low price scenario, DOE decreased the 2006 prices by 25 percent as additional sensitivity analyses. DOE believes that these price sensitivities accurately account for any pricing discrepancies experienced by smaller or larger manufacturers, and adequately consider potential price fluctuations.

For the engineering analysis, DOE did not attempt to forecast future materials prices. DOE continued to use the 2010 materials price in the reference case scenario, added a 2011 reference scenario, and also considered high and low sensitivities to account for any potential fluctuations in materials prices. The LCC and NIA consider a scenario, however, in which transformer prices increase in the future based on increasing materials prices, among other variables. Further detail on this scenario can be found in chapter 8 of the TSD.

6. Markups

DOE derived the manufacturer's selling price for each design in the engineering analysis by considering the full range of production costs and non-production costs. The full production cost is a combination of direct labor, direct materials, and overhead. The overhead contributing to full production cost includes indirect labor, indirect material, maintenance, depreciation, taxes, and insurance related to company assets. Non-production cost includes the cost of selling, general and administrative items (market research, advertising, sales representatives, and logistics), research and development (R&D), interest payments, warranty and risk provisions, shipping, and profit factor. Because profit factor is included in the non-production cost, the sum of production and non-production costs is an estimate of the manufacturer's selling price. DOE utilized various markups to arrive at the total cost for each component of the distribution transformer. These markups are outlined in greater detail in chapter 5 of the TSD.

DOE interviewed manufacturers of distribution transformers and related products to learn about markups, among other topics, and observed a number of very different practices. In absence of a consensus, DOE attempted to adapt manufacturer feedback to inform its current modeling methodology while acknowledging that it may not reflect the exact methodology of many manufacturers. DOE feels that it is necessary to model markups, however, since there are costs other than material and labor that affect final manufacturer selling price. The following sections describe various facets of DOE's markups for distribution transformers.

a. Factory Overhead

DOE uses a factory overhead markup to account for all indirect costs associated with production, indirect materials and energy use (e.g., annealing furnaces), taxes, and insurance. In the preliminary analysis, DOE derived the cost for factory overhead by applying a 12.5 percent markup to direct material production costs.

In the preliminary analysis, DOE applied the same factory overhead markup to its prefabricated amorphous cores as it did to its other design options where the manufacturer was assumed to produce the core. Since the factory overhead markup accounts for indirect production costs that are not easily tied to a particular design, it was applied consistently across all design types. DOE did not find that there was sufficient substantiation to conclude that manufacturers would apply a reduced overhead markup for a design with a prefabricated core.

For today's rule, DOE continued to apply the same factory overhead markup to prefabricated amorphous cores as to other cores built in-house. This approach is consistent with the suggestion of the manufacturers, and DOE notes that factory overhead for a given design applies to many items aside from the core production. Furthermore, since DOE already accounts for decreased labor hours in its designs using prefabricated amorphous cores, but also considers an increased core price based on a prefabricated core rather than the raw amorphous material, it already accounts for the tradeoffs associated with developing the core in-house versus out-sourced.

During negotiations, DOE learned from both manufacturers of transformers and manufacturers of transformer cores that mitering and, to a greater extent, step-lap mitering result in a per-pound cost of finished cores higher than the per-pound cost of butt-lapped units built to the same specifications. (ONYX, Pub. Mtg. Tr., No. 30 at p. 43) In view of the manufacturer comments, DOE understands that butt-lapping is common at baseline efficiencies in today's low-voltage market.

In response, DOE opted to increase mitering costs for both low- and medium-voltage dry-type designs. In the medium-voltage case, DOE incorporated a processing cost of 10 cents per core pound for step-lap mitering. In the low-voltage case, DOE incorporated a processing cost of 10 cents per core pound for ordinary mitering and 20 cents per core pound for step-lap mitering. DOE used different per pound adders for step-lap mitering for medium-voltage and low-voltage units because the base case design option for each is different. For low-voltage units, DOE modeled butt-lapped designs at the baseline efficiency level whereas ordinary mitering was modeled at the baseline for medium-voltage. Therefore, using a step-lap mitered core represents a more significant change in technology for low-voltage dry-type transformers than for medium-voltage transformers, necessitating higher markup.

b. Labor Costs

In the preliminary analysis, DOE accounted for additional labor and material costs for large (≥1500 kVA), dry-type designs using amorphous metal. The additional labor costs accounted for special handling considerations, since the amorphous material is very thin and can be difficult to work with in such a large core. They also accounted for extra bracing that is necessary for large, wound core, dry-type designs in order to prevent short circuit problems.

In response to interested party feedback, DOE applied an incremental increase in core assembly time to amorphous designs in the liquid-immersed design line 5 (1500 kVA). This additional core assembly time of 10 hours is consistent with DOE's treatment of amorphous designs in large, dry-type design lines. However, DOE did not account for additional hardware costs for bracing in the liquid-immersed designs using amorphous cores. This is because DOE already accounts for bracing costs for all of its liquid-immersed designs, which use wound cores, in its analysis. DOE determined that it adequately accounted for these bracing costs in the smaller kVA sizes using amorphous designs, and thus only made the change to the large (≥1500 kVA) design lines. DOE did not model varying incremental cost increases starting with zero for large amorphous designs, as the Northwest Energy Efficiency Alliance (NEEA) and Northwest Power and Conservation Council (NPCC) suggested, noting that the impact of these incremental costs are often very minor for large, expensive transformer designs. (NEEA, No. 11 at p. 7) Following discussion with Federal Pacific and other manufacturers of medium- and low-voltage transformers, DOE explored its estimates of labor hours and increased those relating to core assembly for design lines 6–13B. Details on the specific values of the adjustments can be found in chapter 5 of the TSD.

c. Shipping Costs

During its interviews with manufacturers in the preliminary analysis, DOE was informed that manufacturers often pay shipping (freight) costs to the customer. Manufacturers indicated that they absorb the cost of shipping the units to the customer and that they include these costs in their total cost structure when calculating profit markups. As such, manufacturers apply a profit markup to their shipping costs just like any other cost of their production process. Manufacturers indicated that these costs typically amount to anywhere from four to eight percent of revenue.

In the 2007 final rule, DOE accounted for shipping costs exclusively in the LCC analysis. These costs were paid by the customer, and thus did not include a markup from the manufacturer based on its profit factor. In the preliminary analysis, DOE included shipping costs in the manufacturer's cost structure, which is then marked up by a profit factor. These shipping costs account for delivering the units to the customer, who may then bear additional shipping costs to deliver the units to the final end-use location. As such, DOE accounts for the first leg of shipping costs in the engineering analysis and then any subsequent shipping costs in the LCC analysis. The shipping cost was estimated to be $0.22 per pound of the transformer's total weight. DOE derived the $0.22 per pound by relying on the shipping costs developed in its 2007 final rule, when DOE collected a sample of shipping quotations for transporting transformers. In that rulemaking, DOE estimated shipping costs as $0.20 per pound based on an average shipping distance of 1,000 miles. For the preliminary analysis, DOE updated the cost to $0.22 per pound based on the price index for freight shipping between 2007 and 2010. Additional detail on these shipping costs can be found in chapter 5 and chapter 8 of the TSD.

For the NOPR, DOE revised its shipping cost estimate to account for the rising cost of diesel fuel. DOE adjusted its previous shipping cost of $0.20 (in 2006 dollars) from the 2007 final rule to a 2011 cost based on the producer price index for No. 2 diesel fuel. This yielded a shipping cost of $0.28 per pound. DOE also retained its shipping cost calculation based on the weight of the transformer to differentiate the shipping costs between lighter and heavier, typically more efficient, designs.

In the preliminary analysis, DOE applied a non-production markup to all cost components, including shipping costs, to derive the MSP. DOE based this cost treatment on the assumption that manufacturers would mark up the shipping costs when calculating their final selling price. The resulting shipping costs were, as stated, approximately four to eight percent of total MSP.

Based on comments received and DOE's additional research into the treatment of shipping costs through manufacturer interviews, DOE decided to retain the shipping costs in its calculation of MSP, but not to apply any markups to the shipping cost component. Therefore, shipping costs were added separately into the MSP calculation, but not included in the cost basis for the non-production markup. The resulting shipping costs were still in line with the estimate of four to eight percent of MSP for all the dry-type design lines. For the liquid-immersed design lines, the shipping costs ranged from six to twelve percent of MSP and averaged about nine percent of MSP. This practice was retained for the final rule.

7. Baseline Efficiency and Efficiency Levels

DOE analyzed designs over a range of efficiency values for each representative unit. Within the efficiency range, DOE developed designs that approximate a continuous function of efficiency. However, DOE only analyzes incremental impacts of increased efficiency by comparing discrete efficiency benchmarks to a baseline efficiency level. The baseline efficiency level evaluated for each representative unit is the existing energy conservation standard level of efficiency for distribution transformers established either in DOE's 2007 final rule for medium-voltage transformers or by EPACT 2005 for low-voltage transformers. The incrementally higher efficiency benchmarks are referred to as ''efficiency levels'' (ELs) and, along with MSP values, characterize the cost-efficiency relationship above the baseline.

For today's rule, DOE considered several criteria when setting ELs. First, DOE harmonized the efficiency values across single-phase transformers and the per-phase kVA equivalent three-phase transformers. For example, a 50 kVA single-phase transformer would have the same efficiency requirement as a 150 kVA three-phase transformer. This approach is consistent with DOE's methodology from the 2007 final rule and from the preliminary analysis of this rulemaking. Therefore, DOE selected equivalent ELs for several of the representative units that have equivalent per-phase kVA ratings.

Second, DOE selected equally spaced ELs by dividing the entire efficiency range into five to seven evenly spaced increments. The number of increments depended on the size of the efficiency range. This allowed DOE to examine impacts based on an appropriate resolution of efficiency for each representative unit.

Finally, DOE adjusted the position of some of the equally spaced ELs and examined additional ELs. These minor adjustments to the equally spaced ELs allowed DOE to consider important efficiency values based on the results of the software designs. For example, DOE adjusted some ELs slightly up or down in efficiency to consider the maximum efficiency potential of non-amorphous design options. Other ELs were added to consider important benchmark efficiencies, such as the NEMA Premium® efficiency levels for LVDT distribution transformers. Last, DOE considered additional ELs to characterize the maximum-technologically feasible design for representative units where the harmonized per-phase efficiency value would have been unachievable for one of the representative units.

Although DOE's current test procedure specifies a load value at which to test transformers, DOE recognizes that different consumers see real-world loadings that may be higher or lower. In those cases, consumers may choose a transformer offering a lower LCC even when faced with a higher first cost. If DOE's cost/efficiency design cloud were redrawn to reflect loadings other than those specified in the test procedure, different designs would migrate to the optimum frontier of the cloud. Additionally, although DOE's engineering analysis reflects a range of transformers costs for a given EL, the LCC analysis only selects transformer designs near the lowest cost point.

8. Scaling Methodology

a. kVA Scaling

For today's rule, DOE performed a detailed analysis on each representative unit and then extrapolated the results of its analysis from the unit studied to the other kVA ratings within that same engineering design line. DOE performed this extrapolation to develop inputs to the national impacts analysis. The technique it used to extrapolate the findings of the representative unit to the other kVA ratings within a design line is referred to as ''the 0.75 scaling rule.'' This rule states that, for similarly designed transformers, costs of construction and losses scale with the ratio of their kVA ratings raised to the 0.75 power. The relationship is valid where the optimum efficiency loading points of the two transformers being scaled are the same. DOE used the same methodology to scale its findings during the 2007 final rule on distribution transformers.

Because it is not practical to directly analyze every combination of design options and kVAs under the rulemaking's scope of coverage, DOE selected a smaller number of units it believed to be representative of the larger scope. Many of the current design lines use representative units retained from the 2007 final rule with minor modifications. To generate efficiency values for kVA values not directly analyzed, DOE employed a scaling methodology based on physical principles (overviewed in Appendix 5B) and widely used by industry in various forms. DOE's scaling methodology is an approximation and, as with any approximation, can suffer in accuracy as it is extended further from its reference value.

Additionally, DOE modified the way it splices extrapolations from each representative unit to cover equipment classes at large. Previously, DOE extrapolated curves from individual data points and blended them near the boundaries to set standards. Currently, DOE fits a single curve through all available data points in a space and believes that the resulting curve is smoother and offers a more robust scaling behavior over the covered kVA range.

DOE received a number of comments on the matter of scaling across kVA ranges. Cooper Power Systems supported the use of the .75 exponent, though noted that it may not hold for higher kVA values. (Cooper, No. 165 at p. 4) MGLW commented that for single-phase pad-mounted distribution transformers the exponent may approach .75, but that it was not accurate for single-phase pole-mounted distribution transformers, whose curve would be of polynomial form. (MLGW, No. 127 at p. 1) PEMCO proposed to use a curve in logarithmic space, which would create an even more complex behavior in linear coordinates. (PEMCO, No. 183 at p. 2) Progress Energy commented that DOE should avoid scaling altogether, and instead use data from vendors. (PE, No. 192 at p. 6) ABB, APPA, BG&E, EEI, Howard, NEMA, NRECA, Power Partners, Prolec-GE, Commonwealth Edison, and Schneider all commented that DOE's general approach was sound, but that the accuracy of the procedure may be improved with more data-validated modeling. (ABB, No. 158 at p. 7; APPA, No. 191 at pp. 7–8; APPA, No. 237 at p. 3; BG&E, No. 182 at p. 5; EEI, No. 185 at p. 9; HI, No. 151 at p. 12; NEMA, No. 170 at p. 10; NRECA, No. 172 at p. 6; Power Partners, No. 155 at p. 3; Prolec-GE, No. 146 at pp. 82–83; Prolec-GE, No. 177 at p. 10; ComEd, No. 184 at p. 10; Schneider, No. 180 at p. 5)

In the case of equipment class 1, which addresses single-phase liquid-immersed distribution transformers, some stakeholders expressed confusion on the scaling. Because this equipment class contains three design lines and because DOE is deriving a standard using a straight line in logarithmic space, it is possible that the three ELs, one from each design line) may not fall exactly in-line. In that case, as occurred for equipment class one with TSL 1, DOE best fit a straight line through three points. APPA, EEI, Berman Economics, NRECA, Pepco, and the Advocates both commented that because DOE did not propose a standard that aligned with each of these ELs, the economic results were not exact. (APPA, No. 191 at p. 3; Berman Economics, No. 150 at p. 2; NRECA, No. 2; Pepco, No. 145 at pp. 1–2; Advocates, No. 186 at pp. 9–10) DOE thanks the commenters for making that clear, and has revised its presentation of final rule economic results accordingly.

For today's rule, DOE finds the NOPR methodology well-supported by a large number of stakeholders and continues to employ it. DOE believes transformers are approximately well-modeled as power-law devices. In other words, attributes of the devices should grow in proportion to the size raised to a constant power. The ideal, mathematically derived value of that exponent is .75, but in practice transformers may not be constructed ideally and other effects may drive the exponent above or below .75. DOE believes allowing the exponent to float from .75 where justified may help to account for certain size-dependent effects not always well captured by the theoretical .75 result.

b. Phase Count Scaling

In the 2007 final rule, DOE covered both single- and three-phase transformers and harmonized standards across phases. More specifically, DOE set standards such that a single-phase transformer of a certain type (e.g., liquid immersed) and kVA rating (e.g., 100) would be required to meet the same standard as would a three-phase transformer of the same type and three times the kVA rating (in this example, 300 kVA liquid immersed). In certain cases, DOE believes there is sound technological basis for doing so. For example, three-phase liquid-immersed distribution transformers mounted on poles are frequently constructed using three single-phase cores inside of a single housing. Although miscellaneous losses may vary slightly (e.g., bus losses) across three- and single-phase pole-mounted units, one would expect the core-and-coil efficiencies to be identical for a similar construction choices such as steel grade, winding grade, core geometry, etc.

In many other cases, however, there may not be a strong technical basis for strongly coupling single- and three-phase standards. Several parties commented on the matter in response to the NOPR.

Howard Industries and Power Partners both supported linking single- and three-phase standards, as was done in the 2007 final rule. (HI, No. 151 at p. 12; Power Partners, No. 155 at p. 3) ABB, APPA, Cooper, NEMA, Progress Energy, Prolec-GE, and Schneider, however, argued that construction differences resulted in there being no logical reason to link the two standards, and that any standards should be derived from independent analysis of each. (ABB, No. 158 at p. 7; APPA, No. 191 at p. 7; Cooper, No. 165 at p. 3; NEMA, No. 170 at p. 10; NEMA, No. 170 at p. 3; PE, No. 192 at p. 6; Prolec-GE, No. 146 at p. 85; Prolec-GE, No. 177 at p. 9; Schneider, No. 180 at p. 5)

In today's rule, DOE follows the convention of the NOPR and does not impose the constraint that single- and three-phase efficiencies must be linked. DOE notes, however, that standards were harmonized across phase counts in the case of single-phase MVDT equipment classes, where market volume is minimal and direct analysis of such units a lower priority.

9. Material Availability

Throughout this rulemaking, DOE received several comments expressing concern over the availability of materials, including core steel and conductors, needed to build energy efficient distribution transformers. These issues pertain to a global scarcity of materials as well as issues of materials access for small manufacturers.

DOE is aware that many core steels, including amorphous steels, have constraints on their supply and presents an analysis of global steel supply in TSD appendix 3–A.

10. Primary Voltage Sensitivities

DOE understands that primary voltage and the accompanying BIL may increasingly affect efficiency of liquid-immersed transformers as standards rise. DOE may conduct primary voltage sensitivity analysis in order to better quantify the effects of BIL and primary voltage on efficiency, and may use such information to consider establishing equipment classes by BIL rating for liquid-immersed distribution transformers.

11. Impedance

In the engineering analysis, DOE only considered transformer designs with impedances within the normal impedance ranges specified in Table 1 and Table 2 of 10 CFR 431.192. These impedances represent the typical range of impedance that is used for a given liquid-immersed or dry-type transformer based on its kVA rating and whether it is single-phase or three-phase.

Several stakeholders expressed concern over efficiency standards that could potentially cause changes in impedance. Progress Energy, BG&E, NEMA and ComEd all commented that the increased efficiency levels in the 2010 standards resulted in changes in impedance values. (PE, No. 192 at p. 11;

BG&E, No. 182 at p.10; ComEd, No. 184 at p. 15; NEMA, No. 170 at pp. 18–19) ''Manufacturers are already having challenges with transformer designs that meet the efficiencies required in the Final Rule dated October 12, 2007, the minimum impedance requirement of 5.3% and weight limit of 3,600 lbs * * * for select ComEd designs * * * only one of five suppliers from which ComEd is currently purchasing can meet the efficiency, impedance and weight requirements.'' (ComEd, No. 184 at p. 15) Howard Industries concurred that changes in efficiency standards may also change impedance, commenting that for SPS type designs higher efficiency levels typically bring lower impedance which leads to short circuit let-through current. (HI, No. 151 at p. 12) BG&E also noted that if higher efficiency standards drive impedance ranges outside of the IEEE required range, utilities will be forced to change out a whole block of transformers, even if only one is directly affected, to ensure matching impedances and a safe, reliable installation. (BG&E, No. 182 at p. 10) NRECA and APPA second this point, noting that transformers must meet IEEE standards concerning impedance values while simultaneously meeting or exceeding the DOE minimum efficiency standards. (NRECA, No. 172 at p. 11; APPA, No. 191 at p. 14) Schneider Electric pointed out that changes in impedance levels impact the voltage drop of the system and potential increased impedance due to higher efficiency designs could impact overall energy conservation; the impact in line losses from the increased impedance could offset any benefits obtained in the transformer. (Schneider, No. 180 at p. 11) ABB expressed concern that the X/R ratio could rise with increasing standards which could result in higher losses in the distribution system as a whole. It is ABB's opinion that if there is an applicable industry standard for a specific transformer then the X cannot be adjusted as easily and will result in an increased X/R. (ABB, No. 158 at p. 10) Furthermore, it noted that as efficiency increases, resistance decreases, causing a higher X/R ratio. They commented that if there is no applicable industry standard on a specific transformer for impedance values, the X could be offset to correlate with the change in R, however, this would lead to an increase in the percent [voltage] regulation [30] and higher losses in the transformer. If there is an industry standard, the X cannot be adjusted as easily and will result in an increased X/R. (ABB, No. 158 at p. 10) ConEd also pointed out that higher efficiencies may lead to higher inrush currents, which may require installation of more robust and costly distribution components to be installed which would increase costs. (ConEd, No. 236 at p. 4)

On the other hand, various stakeholders claimed that there was no direct relationship between impedance and efficiency levels. EEI commented that they would be concerned if higher standards would make it more difficult for manufacturers to meet the necessary requirements for impedance, inrush current and X/R ratio, but noted that they are not currently aware of any existing direct relationship. (EEI, No. 185 at p. 20) Prolec-GE agreed, noting that they did not see any issues with inrush, X/R ratios, or impedance at the levels proposed in the NOPR. (Prolec-GE, No. 177 at p. 16)

For today's rule, DOE continued to consider only designs within the normal impedance ranges used in the preliminary analysis. DOE believes that this demonstrates the possibility of manufacturing a variety of impedances at efficiencies well in excess of those adopted in today's rule. While certain applications may have specifications that are more stringent than these normal impedance ranges, DOE believes that the majority of applications are able to tolerate impedances within these ranges. Since DOE considers a wide array of designs within the normal impedance ranges, it adequately accounts for the cost considerations of higher and lower impedance tolerances. Furthermore, DOE believes the standards under consideration in the NOPR to be of modest enough increase to minimize serious concern with respect to impedance and X/R ratio.

12. Size and Weight

In the preliminary analysis, DOE did not constrain the weight of its designs. DOE accounted for the full weight of each design generated by the optimization software based on its materials and hardware. Similarly, DOE let several dimensional measurements of its designs vary based on the optimal core/coil dimensions plus space factors. However, DOE did hold certain tank and enclosure dimensions constant for its design lines. Most notably, DOE fixed the height dimension on all of its rectangular tank transformers. For each design that had variable dimensions, DOE accounted for the additional cost of installing the unit, where applicable.

For today's engineering analysis, DOE did not restrict its designs based on a limit for size or weight beyond the fixed height measurements it was already considering for the rectangular tank sizes. DOE understands that larger transformers may require additional installation costs such as a new pole change-out or vault expansion. To the extent that it had data on these additional costs, DOE accounted for them in its LCC analysis, as described in section IV.F. However, DOE did not choose to limit its design specifications based on a specific size or weight constraint.

Nonetheless, DOE notes that the majority of its designs are within weight constraints suggested by stakeholders. In design line 2, over 95 percent of DOE's designs are below 650 pounds. In design line 3, over 62 percent of DOE's designs are below 3,600 pounds, and when only the designs with the lowest first cost are considered, nearly 74 percent of the designs are less than 3,600 pounds. The majority of the designs that exceed 3,600 pounds are at the maximum efficiency levels using an amorphous core steel.

DOE worked with manufacturers to explore the magnitude of the effect of longer buses and leads and found it to be small relative to the gap between efficiency levels. Nonetheless, DOE made small upward adjustments to bus and lead losses of all medium-voltage dry-type design lines. Details on the specific values of the adjustments made can be found in chapter 5 of the TSD.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the estimates of manufacturer selling price derived in the engineering analysis to customer prices. In the preliminary analysis, DOE determined the distribution channels for distribution transformers, their shares of the market, and the markups associated with the main parties in the distribution chain, distributors, contractors and electric utilities.

Based on comments from interested parties, for the NOPR DOE added a new distribution channel to represent the direct sale of transformers to utilities, which account for approximately 80 percent of liquid-immersed transformer shipments. Howard Industries and Prolec-GE agreed with DOE's estimate that 80 percent of transformers are sold by manufacturers to utilities. (HI, No. 151 at p. 8; Prolec-GE, No. 177 at p. 13) For the final rule, DOE retained this distribution channel.

DOE developed average distributor and contractor markups by examining the installation and contractor cost estimates provided by *RS Means*

[30] In other words, how well a transformer maintains output voltage as load increases.

Electrical Cost Data 2011.[31] DOE developed separate markups for baseline equipment (baseline markups) and for the incremental cost of more-efficient equipment (incremental markups). Incremental markups are coefficients that relate the change in the installation cost due to the increase equipment weight of some higher-efficiency models.

Chapter 6 of the final rule TSD provides additional detail on the markups analysis.

E. Energy Use Analysis

The energy use analysis produced energy use estimates and end-use load shapes for distribution transformers. The energy use estimates enable evaluation of energy savings from the operation of distribution transformer equipment at various efficiency levels, while the end-use load characterization allows evaluation of the impact on monthly and peak demand for electricity.

The energy used by distribution transformers is characterized by two types of losses. The first are no-load losses, which are also known as core losses. No-load losses are roughly constant and exist whenever the transformer is energized (*i.e.,* connected to live power lines). The second are load losses, which are also known as resistance or I^2R losses. Load losses vary with the square of the load being served by the transformer.

Because the application of distribution transformers varies significantly by type of transformer (liquid immersed or dry type) and ownership (electric utilities own approximately 95 percent of liquid-immersed transformers; commercial/industrial entities use mainly dry type), DOE performed two separate end-use load analyses to evaluate distribution transformer efficiency. The analysis for liquid-immersed transformers assumes that these are owned by utilities and uses hourly load and price data to estimate the energy, peak demand, and cost impacts of improved efficiency. For dry-type transformers, the analysis assumes that these are owned by commercial and industrial customers, so the energy and cost savings estimates are based on monthly building-level demand and energy consumption data and marginal electricity prices. In both cases, the energy and cost savings are estimated for individual transformers and aggregated to the national level using weights derived from either utility or commercial/industrial building data.

For utilities, the cost of serving the next increment of load varies as a function of the current load on the system. To correctly estimate the cost impacts of improved transformer efficiency, it is therefore important to capture the correlation between electric system loads and operating costs and between individual transformer loads and system loads. For this reason, DOE estimated hourly loads on individual liquid-immersed transformers using a statistical model that simulates two relationships: (1) The relationship between system load and system marginal price; and (2) the relationship between the transformer load and system load. Both are estimated at a regional level.

Transformer loading is an important factor in determining which types of transformer designs will deliver a specified efficiency, and for calculating transformer losses. For the NOPR, DOE estimated a range of loading for different types of transformers based on analysis done for the 2007 final rule. During the negotiations the load distributions were presented and found to be reasonable by the parties. In addition, data submitted by Moon Lake Electric during the negotiations were used to validate the load models for single-phase liquid-immersed distribution transformers.

For the NOPR, higher-capacity three-phase liquid-immersed and medium-voltage dry-type transformers were loaded at 20 to 66 percent, and smaller capacity single-phase medium-voltage liquid-immersed transformers were loaded at 20 to 60 percent. Low-voltage dry-type transformers were loaded at 3 to 45 (mean of 25) percent.

Cooper stated that the average loading used for liquid-filled transformers was underestimated, and historical utility evaluation factors suggest 50 percent loading for single-phase liquid-immersed transformers and closer to 60 percent for three-phase liquid-immersed transformers. (Cooper, No. 165 at p. 5) EEI stated that higher capacity three-phase distribution transformers are likely to be serving large industrial facilities with higher loading factors. (EEI, No. 185 at p. 14) Utilities stakeholders responded with a wide range of average loading values that they have on their distribution transformers: ComEd stated that its aggregated load factors range from approximately 40 to 70 percent depending on the customer class. (ComEd, No. 184 at p. 2) MLGW stated that its average aggregated load factor was approximately 17 percent across its distribution system. (MLGW, No. 133 at p. 1) PEPCO agreed that the average aggregate load factors presented in the NOPR were a good compromise and that they should not be changed. (PEMCO, No.183 at p. 2)

As previously mentioned, DOE was able to validate its load models for single-phase liquid-immersed transformers using submitted data, so it retained the loading used in the NOPR for the final rule. For three-phase liquid-immersed transformers, DOE believes that the comment from Cooper does not provide an adequate basis for changing the loading range that was viewed as reasonable by the parties to the negotiation and the loading values provided by utilities comport with DOE's estimated loadings.

Dry-type distribution transformers are primarily installed on buildings and owned by the building owner/operator. Commercial and industrial (C&I) utility customers are typically billed monthly, with the bill based on both electricity consumption and demand. Hence, the value of improved transformer efficiency depends on both the load impacts on the customer's electricity consumption and demand and the customer's marginal prices.

The customer sample of dry-type distribution transformer owners was taken from the EIA Commercial Buildings Energy Consumption Survey (CBECS) databases.[32] Survey data for the years 1992 and 1995 were used, as these are the only years for which monthly customer electricity consumption (kWh) and peak demand (kW) are provided. To account for changes in the distribution of building floor space by building type and size, the weights defined in the 1992 and 1995 building samples were rescaled to reflect the distribution in the most recent (2003) CBECS survey. CBECS covers primarily commercial buildings, but a significant fraction of transformers are shipped to industrial building owners. To account for this in the sample, data from the 2006 Manufacturing Energy Consumption Survey (MECS)[33] were used to estimate the amount of floor space of buildings that might use the type of transformer covered by the rulemaking. The statistical weights assigned to the building sample were rescaled to reflect this additional floor space. Only the weighting of large buildings were rescaled.

[31] RSMeans Electrical Cost Data 2011; 2010; J.H. Chiang, C. Babbitt.

[32] 1992 Commercial Building Energy Consumption and Expenditures Survey (CBECS); 1995; U.S. Department of Energy—Energy Information Administration; *http://www.eia.doe.gov/emeu/cbecs/microdat.html.*

[33] Manufacturing Energy Consumption Survey (MECS); 2006 U.S. Department of Energy—Energy Information Administration; *http://www.eia.gov/emeu/mecs/contents.html.*

F. Life-Cycle Cost and Payback Period Analysis

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual customers of potential energy conservation standards for distribution transformers.[34] The LCC is the total customer expense over the life of a type of equipment, 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 equipment. The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of a more efficient type of equipment 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.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case efficiency levels. The base-case estimate reflects the market in the absence of amended energy conservation standards, including the market for equipment that exceeds the current energy conservation standards.

Equipment price, installation cost, and baseline and standard affect the installed cost of the equipment. Transformer loading, load growth, power factor, annual energy use and demand, electricity costs, electricity price trends, and maintenance costs affect the operating cost. The compliance date of the standard, the discount rate, and the lifetime of equipment affect the calculation of the present value of annual operating cost savings from a proposed standard. Table IV.16 below summarizes the major inputs to the LCC and PBP analysis, and whether those inputs were revised for the final rule.

DOE calculated the LCC and PBP for a representative sample (a distribution) of individual transformers. In this manner, DOE's analysis explicitly recognized that there is both variability and uncertainty in its inputs. DOE used Monte Carlo simulations to model the distributions of inputs. The Monte Carlo process statistically captures input variability and distribution without testing all possible input combinations. Therefore, while some atypical situations may not be captured in the analysis, DOE believes the analysis captures an adequate range of situations in which transformers operate.

TABLE IV.6—KEY INPUTS FOR THE LCC AND PBP ANALYSIS

Inputs	NOPR description	Changes for the final rule
	Affecting Installed Costs	
Equipment price	Derived by multiplying manufacturer selling price (from the engineering analysis) by distributor markup and contractor markup plus sales tax for dry-type transformers. For liquid-immersed transformers, DOE used manufacturer selling price plus small distributor markup plus sales tax. Shipping costs were included for both types of transformers.	No change.
Installation cost	Includes a weight-specific component derived from *RS Means Electrical Cost Data 2011* and a markup to cover installation labor, pole replacement costs for design line 2 and equipment wear and tear.	Added pole replacement cost for design line 3.
Baseline and standard design selection.	The selection of baseline and standard-compliant transformers depends on customer behavior. The fraction of purchases evaluated was 10% for liquid-immersed transformers, 2% for low-voltage dry-type and 2% for medium-voltage dry-type transformers.	No change.
	Affecting Operating Costs	
Transformer loading	Modeled loading as a function of transformer capacity and utility customer density.	No change.
Load growth	0.5% per year for liquid-immersed and 0% per year for dry-type transformers.	No change.
Power factor	Assumed to be unity	No change.
Annual energy use and demand	Derived from a statistical hourly load simulation for liquid-immersed transformers, and estimated from the 1992 and 1995 *Commercial Building Energy Consumption Survey* data for dry-type transformers using factors derived from hourly load data. Load losses varied as the square of the load and were equal to rated load losses at 100% loading.	No change.
Electricity costs	Derived from tariff-based and hourly based electricity prices. Capacity costs provided extra value for reducing losses at peak.	No change.
Electricity price trend	Obtained from *Annual Energy Outlook 2011* (*AEO2011*)	Updated to AEO 2012. Price trends for liquid-immersed transformers are based on a mix of generating fuel prices.
Maintenance cost	Annual maintenance cost did not vary as a function of efficiency	No change.
Compliance date	Assumed to be 2016	No change.
Discount rates	Mean real discount rates ranged from 3.7% for owners of liquid-immersed transformers to 4.6% for dry-type transformer owners.	No change.
Lifetime	Distribution of lifetimes, with mean lifetime for both liquid and dry-type transformers assumed to be 32 years.	No change.

[34] Customers refer to electric utilities in the case of liquid-immersed transformers, and to utilities and building owners in the case of dry-type transformers.

The following sections contain brief discussions of comments on the inputs and key assumptions of DOE's LCC and PBP analysis and explain how DOE took these comments into consideration.

1. Modeling Transformer Purchase Decision

The LCC spreadsheet uses a purchase-decision model that specifies which of the hundreds of designs in the engineering database are likely to be selected by transformer purchasers to meet a given efficiency level. The engineering analysis yielded a cost-efficiency relationship in the form of manufacturer selling prices, no-load losses, and load losses for a wide range of realistic transformer designs. This set of data provides the LCC model with a distribution of transformer design choices.

DOE used an approach that focuses on the selection criteria customers are known to use when purchasing transformers. Those criteria include first costs, as well as what is known in the transformer industry as total owning cost (TOC). The TOC method combines first costs with the cost of losses. Purchasers of distribution transformers, especially in the utility sector, have long used the TOC method to determine which transformers to purchase.

The utility industry developed TOC evaluation as an easy-to-use tool to reflect the unique financial environment faced by each transformer purchaser. To express variation in such factors as the cost of electric energy, and capacity and financing costs, the utility industry developed a range of evaluation factors, called A and B values, to use in their calculations. A and B are the equivalent first costs of the no-load and load losses (in $/watt), respectively.

DOE used evaluation rates as follows: 10 percent of liquid-immersed transformers were evaluated, 2 percent of low-voltage dry-type transformers were evaluated, and 2 percent of medium-voltage dry-type transformers were evaluated. The transformer selection approach is discussed in detail in chapter 8 of the final rule TSD.

2. Inputs Affecting Installed Cost

a. Equipment Costs

In the LCC and PBP analysis, the equipment costs faced by distribution transformer purchasers are derived from the MSPs estimated in the engineering analysis and the overall markups estimated in the markups analysis.

To forecast a price trend for the NOPR, DOE derived an inflation-adjusted index of the PPI for electric power and specialty transformer manufacturing from 1967 to 2010. These data show a long-term decline from 1975 to 2003, and then a steep increase since then. DOE believes that there is considerable uncertainty as to whether the recent trend has peaked, and would be followed by a return to the previous long-term declining trend, or whether the recent trend represents the beginning of a long-term rising trend due to global demand for distribution transformers and rising commodity costs for key transformer components. Given the uncertainty, DOE chose to use constant prices (2010 levels) for both its LCC and PBP analysis and the NIA. For the NIA, DOE also analyzed the sensitivity of results to alternative transformer price forecasts.

DOE did not receive comments on the most appropriate trend to use for real transformer prices, and it retained the approach used for the NOPR for today's final rule.

b. Installation Costs

Higher efficiency distribution transformers tend to be larger and heavier than less efficient designs. The degree of weight increase depends on how the design is modified to improve efficiency. In the NOPR analysis, DOE estimated the increased cost of installing larger, heavier transformers based on estimates of labor cost by transformer capacity from Electrical Cost Data 2011 Book by RSMeans.[35] DOE retained the same approach for the final rule. DOE's analysis of increase in installation labor costs as transformer weight increases is described in detail in chapter 6 of the final rule TSD.

For pole-mounted transformers, represented by design lines (DL) 2 and 3, the increased weight may lead to situations where the pole needs to be replaced to support the additional weight of the transformer. This in turn leads to an increase in the installation cost. To account for this effect in the analysis, three steps are needed:

The first step is to determine whether the pole needs to be changed. This depends on the weight of the existing transformer compared to the weight of the transformer under a proposed efficiency level, and on assumptions about the load-bearing capacity of the pole. In the NOPR analysis, it was assumed that a pole change-out will only be necessary if the weight increase is larger than 15 percent of the weight of the baseline unit, which DOE used to represent the existing transformer, and more than 150 pounds heavier for a design line 2 transformer, and 1,418 pounds heavier for a design line 3 transformer. While EEI stated that it may take less than a 1,418 pound increase for a design line 3 distribution transformer to require a pole change out (EEI, No. 229 at p. 2), neither EEI nor its members provided comments to support a different value. Therefore, DOE believes there is not a compelling reason to change from the approach used in the NOPR. Utility poles are primarily made of wood. Both ANSI[36] and the National Electrical Safety Code (NESC)[37] provide guidelines on how to estimate the strength of a pole based on the tree species, pole circumference and other factors. Natural variability in wood growth leads to a high degree of variability in strength values across a given pole class. Thus, NESC also provides guidelines on reliability, which result in an acceptable probability that a given pole will exceed the minimal required design strength. Because poles are sized to cope with large wind stresses and potential accumulation of snow and ice, this results in ''over-sizing'' of the pole relative to the load by a factor of two to four. Accounting for this ''over-sizing,'' DOE estimated that the total fraction of pole replacements would not exceed 25 percent of the total population. Chapter 6 of the final rule TSD explains the approach used to arrive at this figure.

HI commented that there very likely will be a sizeable number of situations where a new pole may be required, but it noted that DOE's assumption that up to 25 percent of the total pole-mounted transformer population may require pole replacements is probably a reasonable figure. (HI, No. 151 at p. 8) EEI, APPA and NRECA suggested that the pole change-out fraction be increased to as high as 50 percent to 75 percent of units located in cities with populations of at least 25,000. (EEI, No. 185 at p. 14; NRECA, No. 172 at p. 10; APPA, No. 191 at p. 12) EEI, NRECA, and APPA did not provide evidence or rationale to support their suggestion of a higher change-out fraction for urban utilities in their comments. Therefore, DOE believes there is not a compelling reason to change from the approach used in the NOPR.

The second step is to determine the cost of a pole change-out. In the NOPR phase, specific examples of pole change-out costs were submitted by the sub-committee. These examples were consistent with data taken from the

[35] J.H. Chiang, C. Babbitt ; RSMeans Electrical Cost Data 2011; 2010.

[36] American National Standards Institute (ANSI), Wood Poles—Specifications and Dimension, ANSI O5.1.2008, 2008.

[37] Institute of Electrical and Electronics Engineers (IEEE), 2012 National Electrical Safety Code (NESC), IEEE C2–2012, 2012.

RSMeans Building Construction Cost database.[38] Based on this information, for design line 2 with a capacity of 25 kVA, a triangular distribution was used to estimate pole change-out costs, with a lower limit at $2,025 and an upper limit at $5,999. For design line 3 with a capacity of 500 kVA, DOE used a similar distribution with a lower limit of $5,877 and an upper limit of $13,274 for pole replacement, and a distribution with a lower limit of $5,877 and an upper limit of $16,899 for multi-pole (platform) replacement. These costs are in addition to the weight-based installation cost described above.

Utility poles have a finite lifetime so, in some cases, pole change-out due to increased transformer weight should be counted as an early replacement of the pole; i.e., it is not correct to attribute the full cost of pole replacement to the transformer purchase. Equivalently, if a pole is changed out when a transformer is replaced, it will have a longer lifetime relative to the pole it replaces, which offsets some of the cost of the pole installation. To account for this effect, pole installation costs are multiplied by a factor *n/pole-lifetime,* which approximately represents the value of the additional years of life. The parameter *n* is chosen from a flat distribution between 1 and the pole lifetime, which is assumed to be 30 years.[39]

DOE received a number of comments on pole replacement costs. Westar stated that it costs them approximately $2,330 to replace an existing pole with a 50-foot Class 1 pole for a 100 kVA distribution transformer, which might be the new norm for residential areas. It added that whenever they replace a pole they would lose NESC grandfathering for that structure and have to redo everything on the pole to bring it up to the current NESC code, instead of merely switching out the transformer. This results in additional labor. (Westar, No. 169 at p. 2) BG&E commented that DOE's methodology may not reflect the true costs of pole change-outs, as pole replacement costs quoted by industry experts are either estimates or they reflect actual costs from previous years. In BG&E's experience, actual costs tend to exceed the estimates by a significant amount (20 to 60 percent). In 2011, its average pole replacement cost was $7,100, which includes the cost of the new pole along with any replacement material used during the installation. (BG&E, No. 223 at p. 2) ComEd also stated that DOE may have underestimated the cost of pole change-outs. At ComEd, the average pole replacement cost is in the range of $4,000–$5,000, which includes the cost of the new pole along with any replacement material and labor. (ComEd, No. 184 at p. 13) Progress Energy stated that it realized average pole replacement costs of $2,200 during 2011, but it noted that during the negotiated meetings, utilities reported pole replacement costs upwards of $12,000. Progress Energy recommended that DOE continue to use the pole replacement costs that they have been using so that the final rule will not be delayed. (Progress Energy, No. 192 at p. 9) EEI suggested that DOE increase the pole change-out cost estimates to a range of values (or a weighted average) provided by EEI member companies. (EEI, No. 185 at p. 14)

The information that DOE received regarding average pole replacement costs was of limited use because most of the utilities did not provide their average pole replacement costs for the transformer capacities used in the analysis. However, DOE notes that the pole replacement costs mentioned in the above comments fall within the range of costs that DOE used for its pole-mounted design lines (design lines 2 and 3). DOE recognizes that there may be some cases where the pole replacement cost may be outside this range, but these would account for a very small fraction of situations.

Westar stated that when mounting a bank of three-phase transformers on a pole, if the weight increased beyond 2,000 pounds per position (which wouldn't be out of the realm of possibility for a transformer using amorphous core steel), they would need to use a 500kVA pad mount. (Westar, No. 169 at p. 2) DOE recognizes that in some situations pole replacement may not be an acceptable option to utilities when replacing transformers. DOE believes that the range of installation costs that it used for pole replacement, in combination with the weight-based installation costs, captures the cost of situations where a pad mount would be needed.

Westar commented that a new design for a pad-mounted transformer could require larger fiberglass pads than they currently use, or they would have to start pouring a concrete pad for each pad mount. (Westar, No. 169 at p. 3) DOE believes that the installation costs it used for pad-mounted transformers, which range from $2,169 for design line 1 (at 50 kVA) to $8,554 for design line 5 (at 1500 kVA), encompass the situation described by Westar.

3. Inputs Affecting Operating Costs

a. Transformer Loading

DOE's assumptions about loading of different types of transformers are described in section IV.E. DOE generally estimated that the loading of larger capacity distribution transformers is greater than the loading on smaller capacity transformers.

b. Load Growth Trends

The LCC analysis takes into account the projected operating costs for distribution transformers many years into the future. This projection requires an estimate of how the electrical load on transformers will change over time. In the NOPR analysis, for dry-type transformers, DOE assumed no-load growth, while for liquid-immersed transformers DOE used as the default scenario a one-percent-per-year load growth. It applied the load-growth factor to each transformer beginning in 2016. To explore the LCC sensitivity to variations in load growth, DOE included in the model the ability to examine scenarios with zero percent, one percent, and two percent load growth.

DOE did not receive comments regarding its load-growth assumptions, and it retained the assumptions described above for the final rule analysis.

c. Electricity Costs

DOE used estimates of electricity prices and costs to place a value on transformer losses. For the NOPR, DOE performed two types of analyses. One investigated the nature of hourly transformer loads, their correlation with the overall utility system load, and their correlation with hourly electricity costs and prices. Another estimated the impacts of transformer loads and resultant losses on monthly electricity usage, demand, and electricity bills. DOE used the hourly analysis for liquid-immersed transformers, which are owned predominantly by utilities that pay costs that vary by the hour. DOE used the monthly analysis for dry-type transformers, which typically are owned by commercial and industrial establishments that receive monthly electricity bills.

For the hourly price analysis, DOE used marginal costs of electricity, which are the costs to utilities for the last kilowatt-hour of electricity produced. The general structure of the hourly marginal cost equation divides the costs

[38] J.H. Chiang, C. Babbitt; RSMeans Electrical Cost Data 2011; 2010.

[39] As the LCC represents the costs associated with purchase of a single transformer, to account for multiple transformers mounted on a single pole, the pole cost should also be divided by a factor representing the average number of transformers per pole. No data is currently available on the fraction of poles that have more than one transformer, so this factor is not included.

of electricity to utilities into capacity components and energy cost components, which are respectively applied as marginal demand and energy charges for the purpose of determining the value of transformer electrical losses. For each component, DOE estimated the economic value for both no-load losses and load losses.

Commenting on DOE's hourly price analysis, NRECA stated that marginal energy prices recover the system generation capacity costs, and demand charges are not needed to collect capacity charges. (NRECA, No. 156 at pp. 4–5) It added that use of demand charges introduces bias towards improved cost-effectiveness of more efficient transformers. (NRECA, No. 156 at p. 7)

DOE disagrees with NRECA's position that demand charges are not needed to collect capacity charges. DOE agrees that marginal energy prices in a single price-clearing auction can provide for recovery of some amount of generation capacity cost, but it is unlikely that an energy-only market (one that relies only on market incentives for investment) would provide for full recovery of system generation capacity costs.[40] Even with the addition of revenues from an ancillary services market, recovery would likely still fall below the full amount of generation capacity cost for a new generator. Indeed, recent market evaluation reports by the Midwest Independent System Operator (ISO) and California ISO (CAISO) demonstrate that energy and ancillary service market prices in those markets are far below the levels that would be necessary to fully compensate a new generation owner for their generation capacity cost.[41] PJM (a regional transmission operator in the eastern U.S.) addresses the gap between the full going-forward costs[42] and the revenues from energy and ancillary services markets through the addition of a separate capacity market.[43] Most other regions use similar capacity markets or require load serving entities (LSEs) to contract for specified amounts of capacity. Examples of operating regions that use capacity markets or require acquisition of specified levels of capacity include CAISO,[44] MISO,[45] and ISO New England.[46] NRECA acknowledges the existence of capacity markets, but implies that the capacity payments can be ignored because their purpose is to reduce price volatility. (NRECA, No. 156 at p. 5) DOE disagrees with this position because ISOs have stated that the capacity markets and contracts are needed to maintain system reliability, not just mitigate price volatility.[47]

Whether an area has a capacity market or capacity requirements, a reduction in electricity demand due to more efficient transformers would lower the amount of capacity purchases required by LSEs, which would lower capacity procurement costs. DOE's application of demand charges captures these lower procurement costs.

DOE acknowledges that not all electricity markets have structured capacity markets or capacity requirements. The Electric Reliability Council of Texas (ERCOT), an energy-only market without set requirements for generation capacity procurement, is premised on the energy market and the ancillary service markets being able to provide sufficient revenues to attract new market entrants as needed. The expectation is that as reserve margins decline, market prices would increase to provide the needed revenues for new investment. In the long-term, absent the cessation of demand growth, one would expect market revenues to equal the full cost of a new market entrant.[48] Given past market behavior, however, the market revenues will likely be relatively low over many hours and extremely high during a limited number of price spike hours. Accurate modeling and forecasting of price spikes is an extremely difficult task. For the ERCOT region, DOE believes that its capacity cost approach is an appropriate proxy to capture the high price spikes that can occur in energy-only markets.

Many publicly owned utilities (POU) are not required to participate in capacity markets or mandated to attain specified amounts of generation capacity. Capacity attainment is at the sole discretion of those POU's governing bodies, but DOE expects that POUs would continue to build or contract with sufficient capacity to provide reliable service to their customers. As this capacity procurement will impose a cost that is incremental to the utility's system marginal energy cost, the use of capacity costs is also appropriate for evaluation of transformer economics for these utilities.

Although DOE believes it is appropriate to include demand charges, for the final rule, DOE reviewed its capacity cost methodology and found that the demand charges used in the NOPR analysis were too high. In the NOPR, demand charges were based on the full fixed cost of new generation. For the final rule, the revised demand charges are based on the full cost of new generation net of the revenues that the generator could earn from the hourly energy market. This quantification of capacity costs net of market revenues is consistent with the design of the nation's capacity markets, including PJM RPM Capacity Market[49] and the ISO–NE Forward Capacity Market.[50] In addition, this method is used to develop marginal costs for the evaluation of distributed resources, energy efficiency, and demand response programs in regions without organized capacity markets, such as California.[51] The modifications for the final rule significantly reduce the capacity cost used in the LCC analysis. The approach is described further in chapter 8 of the final rule TSD.

In the NOPR, to value the capacity costs, DOE used advanced coal technology to reflect generation capacity

[40] On an ''Energy Only'' Electricity Market Design For Resource Adequacy, 2005; William W. Hogan; *http://www.ferc.gov/EventCalendar/files/20060207132019-hogan_energy_only_092305.pdf.*

[41] CAISO 2011 Market Issues and Performance Report, pp. 45–48, *http://www.caiso.com/Documents/2011AnnualReport-MarketIssues-Performance.pdf.* MISO 2010 State of the Market Report Executive Summary, Executive Summary, p. viii, *https://www.midwestiso.org/Library/Repository/Report/IMM/2010%20State%20of%20the%20Market%20Report.pdf.*

[42] The term ''going forward costs'' includes, but is not limited to, all costs associated with fuel transportation and fuel supply, administrative and general, and operation and maintenance on a power plant.*http://law.onecle.com/california/utilities/390.html.*

[43] A Review of Generation Compensation and Cost Elements in the PJM Markets, 2009, p. 30, *http://www.pjm.com/~/media/committees-groups/committees/mrc/20100120/20100120-item-02-review-of-generation-costs-and-compensation.ashx.*

[44] CAISO 2011, p. 181, *http://www.caiso.com/Documents/2011AnnualReport-MarketIssues-Performance.pdf.*

[45] MISO 2010, p. viii; *https://www.midwestiso.org/Library/Repository/Report/IMM/2010%20State%20of%20the%20Market%20Report.pdf.*

[46] ISO New England 2010 Annual Markets Report, p. 33, *http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2010/amr10_final_060311.pdf.*

[47] ISO New England 2010, p. 33, *http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2010/amr10_final_060311.pdf.* PJM 2009, p. 29, *http://www.pjm.com/~/media/committees-groups/committees/mrc/20100120/20100120-item-02-review-of-generation-costs-and-compensation.ashx.* CAISO 2011, p. 181, *http://www.caiso.com/Documents/2011AnnualReport-MarketIssues-Performance.pdf.* NYISO 2010, p. 156; *http://www.nyiso.com/public/markets_operations/documents/studies_reports/index.jsp.*

[48] If an energy-only market is functioning properly, it must be able to provide sufficient revenues to incent new market entrants over the long term. Failure to incent sufficient generation to provide adequate reliability would likely force a market redesign or the introduction of new LSE obligations such as resource adequacy requirements.

[49] PJM 2009, Executive Summary p. 6.

[50] ISO–NE 2010, p. 33; *http://www.iso-ne.com/markets/mkt_anlys_rpts/annl_mkt_rpts/2010/amr10_final_060311.pdf.*

[51] See *http://docs.cpuc.ca.gov/efile/PD/162141.pdf.*

costs for no-load loss generation. NRECA stated that substituting the capacity cost of a combustion turbine/combined-cycle plant for the avoided cost of a new coal-fired plant appears to reduce the savings and cost-effectiveness of the more-efficient transformer designs. (NRECA, No. 156 at p. 9) DOE agrees with NRECA's criticism of the approach used for the NOPR. For the final rule DOE assumed that capacity costs for no-load loss generation depend on the type of generation that is built, and that these losses are served by base load capacity. DOE estimated the capacity cost by assuming that marginal capacity is added in the proportions 40 percent coal, 40 percent natural gas combined-cycle, and 20 percent wind. These proportions are based on the capacity mix estimated in the *AEO 2011* projection.

d. Electricity Price Trends

For the relative change in electricity prices in future years, DOE relied on price forecasts from the Energy Information Administration (EIA) *Annual Energy Outlook* (*AEO*). For the final rule analysis, DOE used price forecasts from *AEO 2012.*

In the NOPR, to project the relative change in electricity prices for liquid-immersed transformers, DOE used the average electricity prices from AEO 2011. NRECA stated that gas-fired combustion turbines and combined cycle units are being used to service base loads today, as well as meeting peak demand (NRECA, No. 156 at p. 9), and EEI asserted that natural gas is the marginal fuel ''a lot'' of the time (EEI, No. 0051–0030 at p. 108). DOE agrees with both of these statements. For the final rule, DOE assumed that future production cost of electricity for utilities, the primary owners of liquid-immersed transformers, would be influenced by the price of fuel for generation (i.e., coal and natural gas). To estimate the relative change in the price to produce electricity in future years in today's rule, DOE applied separate price trends to both no-load and load losses. DOE used the sales weighted price trend of both natural gas and coal to estimate the relative price change for no-load losses; and natural gas only to estimate the relative price change for load losses. These trends are based on the AEO 2012 projections and are described in greater detail in chapter 8 of the TSD.

Appendix 8–D of this final rule TSD provides a sensitivity analysis for equipment of a sub-set of representative design lines. These analysis shows that the effect of changes in electricity price trends, compared to changes in other analysis inputs, is relatively small.

e. Standards Compliance Date

DOE calculated customer impacts as if each new distribution transformer purchase occurs in the year that manufacturers must comply with the standard. As discussed in section II.A, if DOE finds that amended standards for distribution transformers are warranted, DOE agreed to publish a final rule containing such amended standards by October 1, 2012. The compliance date of January 1, 2016, provides manufacturers with over three years to prepare for the amended standards.

f. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. DOE employs a two-step approach in calculating discount rates for analyzing customer economic impacts. The first step is to assume that the actual customer cost of capital approximates the appropriate customer discount rate. The second step is to use the capital asset pricing model (CAPM) to calculate the equity capital component of the customer discount rate. For the preliminary analysis, DOE estimated a statistical distribution of commercial customer discount rates that varied by transformer type by calculating the cost of capital for the different types of transformer owners.

More detail regarding DOE's estimates of commercial customer discount rates is provided in chapter 8 of the final rule TSD.

g. Lifetime

DOE defined distribution transformer life as the age at which the transformer retires from service. For the NOPR analysis, DOE estimated, based on a report by Oak Ridge National Laboratory,[52] that the average life of distribution transformers is 32 years. This lifetime estimate includes a constant failure rate of 0.5 percent/year due to lightning and other random failures unrelated to transformer age, and an additional corrosive failure rate of 0.5 percent/year starting at year 15. DOE did not receive any comments on transformer lifetime and it retained the NOPR approach for the final rule.

h. Base Case Efficiency

To determine an appropriate base case against which to compare various potential standard levels, DOE used the purchase-decision model described in section IV.F.1. For the base case, initially transformer purchasers are allowed to choose among the entire range of transformers at each design line. Transformers are chosen based on either lowest first cost, or if the purchaser is an evaluator, on lowest Total Owning Cost (TOC). During the negotiations (see section II.B.2) manufacturers and utilities stated that ZDMH is not currently used in North America, so designs using ZDMH as a core steel were excluded from the base case.

[52] Barnes. Determination Analysis of Energy Conservation Standards for Distribution Transformers. ORNL–6847. 1996.

i. 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.

j. 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 determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required.

G. National Impact Analysis—National Energy Savings and Net Present Value Analysis

DOE's NIA assessed the national energy savings (NES) and the national NPV of total customer costs and savings that would be expected to result from amended standards at specific efficiency levels. (''Customer'' refers to purchasers of the equipment being regulated.)

To make the analysis more accessible and transparent to all interested parties, DOE used an MS Excel spreadsheet model to calculate the energy savings and the national customer costs and savings from each TSL.[53] DOE used the NIA spreadsheet to calculate the NES and NPV, based on the annual energy consumption and total installed cost data from the energy use characterization and the LCC analysis. DOE forecasted the energy savings, energy cost savings, equipment costs, and NPV of customer benefits for each product class for equipment sold from 2016 through 2045. The forecasts provided annual and cumulative values for all four output parameters. In addition, DOE analyzed scenarios that used inputs from the *AEO 2012* Low Economic Growth and High Economic Growth cases. These cases have higher and lower energy price trends compared to the reference case. NIA results based on these cases are presented in appendix 10–B of the final rule TSD.

DOE evaluated the impacts of amended standards for distribution transformers by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and customer costs for each equipment class in the absence of amended energy conservation standards. DOE compared these projections with projections characterizing the market for each equipment class if DOE were to adopt amended standards at specific energy efficiency levels (i.e., the standards cases) for that class.

Table IV.27 and Table IV.38 summarize all the major NOPR inputs to the shipments analysis and the NIA, and whether those inputs were revised for the final rule.

TABLE IV.7—INPUTS FOR THE SHIPMENTS ANALYSIS

Input	NOPR description	Changes for final rule
Shipments data	Third-party expert (HVOLT) for 2009	No change.
Shipments forecast	2016–2045: Based on *AEO 2011*	Updated to AEO 2012.
Dry-type/liquid-immersed market shares.	Based on EIA's electricity sales data and *AEO2011*	Updated to AEO 2012.
Regular replacement market	Based on a survival function constructed from a Weibull distribution function normalized to produce a 32-year mean lifetime*.	No change.
Elasticities, liquid-immersed	For liquid-immersed transformers • Low: 0.00 • Medium: −0.04 • High: −0.20	No change.
Elasticities, dry-type	For dry-type transformers • Low: 0.00 • Medium: −0.02 • High: −0.20	No change.

*Source: ORNL 6804/R1, *The Feasibility of Replacing or Upgrading Utility Distribution Transformers During Routine Maintenance,* page D–1.

TABLE IV.8—INPUTS FOR THE NATIONAL IMPACT ANALYSIS

Input	NOPR description	Changes for the final rule
Shipments	Annual shipments from shipments model	No change.
Compliance date of standard	January 1, 2016	No change.
Equipment Classes	Separate ECs for single- and three-phase liquid-immersed distribution transformers.	No change
Base case efficiencies	Constant efficiency through 2044. Equal to weighted-average efficiency in 2016.	No change.
Standards case efficiencies	Constant efficiency at the specified standard level from 2016 to 2044	No change.
Annual energy consumption per unit	Average rated transformer losses are obtained from the LCC analysis, and are then scaled for different size categories, weighted by size market share, and adjusted for transformer loading (also obtained from the LCC analysis).	No change.
Total installed cost per unit	Weighted-average values as a function of efficiency level (from LCC analysis).	No change.
Electricity expense per unit	Energy and capacity savings for the two types of transformer losses are each multiplied by the corresponding average marginal costs for capacity and energy, respectively, for the two types of losses (marginal costs are from the LCC analysis).	No change.
Escalation of electricity prices	*AEO 2011* forecasts (to 2035) and extrapolation for 2044 and beyond	Updated to AEO 2012.
Electricity site-to-source conversion	A time series conversion factor; includes electric generation, transmission, and distribution losses.	No change
Discount rates	3% and 7% real	No change.
Present year	2010	2012.

[53] DOE understands that MS Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of MS Excel as the basis for the spreadsheet models provides interested parties with access to the models within a familiar context. In addition, 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.

1. Shipments

DOE projected transformer shipments for the base case by assuming that long-term growth in transformer shipments will be driven by long-term growth in electricity consumption. The detailed dynamics of transformer shipments is highly complex. This complexity can be seen in the fluctuations in the total quantity of transformers manufactured as expressed by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), transformer quantity index. DOE examined the possibility of modeling the fluctuations in transformers shipped using a bottom-up model where the shipments are triggered by retirements and new capacity additions, but found that there were not sufficient data to calibrate model parameters within an acceptable margin of error. Hence, DOE developed the transformer shipments projection by assuming that annual transformer shipments growth is equal to growth in electricity consumption as given by the *AEO 2012* forecast through 2035. For the years from 2036 to 2045, DOE extrapolated the *AEO 2012* forecast with the growth rate of electricity consumption from 2025 to 2035. The model starts with an estimate of the overall growth in transformer capacity and then estimates shipments for particular design lines and transformer sizes using estimates of the recent market shares for different design and size categories. Chapter 9 of the final rule TSD provides a detailed description of how DOE projected shipments for each of the equipment classes in today's final rule.

DOE recognizes that increase in transformer prices due to standards may cause changes in purchase of new transformers. Although the general trend of utility transformer purchases is determined by increases in generation, utilities conceivably exercise some discretion in how much transformer capacity to buy—the amount of ''over-capacity'' to purchase. In addition, some utilities may choose to refurbish transformers rather than purchase a new transformer if the price of the latter increases significantly.

To capture the customer response to transformer price increase, DOE estimated the customer price elasticity of demand. In DOE's estimation of the purchase price elasticity, it used a logit function to characterize the utilities' response to the price of a unit capacity of transformer. The functional form captures what can be called an average price elasticity of demand with a term to capture the estimation error, which accounts for all other effects. Although DOE was not able to explicitly model the replace versus refurbish decision due to lack of necessary data, the price elasticity should account for any decrease in the shipments due to a decision on the customer's part to refurbish transformers as opposed to purchasing a new unit. DOE's approach is described in chapter 9 of the final rule TSD. Comments on the issue of replacing versus refurbishing are discussed in section IV.O.3 of this preamble.

2. Efficiency Trends

DOE did not include any base case efficiency trend in its shipments and national energy savings models. AEO forecasts show no long term trend in transmission and distribution losses, which are indicative of transformer efficiency. DOE estimates that the probability of an increasing efficiency trend and the probability of a decreasing efficiency trend are approximately equal, and therefore assumed no trend in base case or standards case efficiency.

3. National Energy Savings

For each year in the forecast period, DOE calculates the national energy 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 savings are the sum of the NES for each year.

To estimate national energy savings, DOE uses a multiplicative factor to convert site energy consumption into primary energy consumption (the energy required to convert and deliver the site energy). This conversion factor accounts for the energy used at power plants to generate electricity and losses in transmission and distribution. The conversion factor varies over time because of projected changes in 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 standards. For today's rule, DOE used annual conversion factors based on the version of NEMS that corresponds to *AEO 2012,* which provides energy forecasts through 2035. For 2036–2047, DOE used conversion factors that remain constant at the 2035 values.

Section 1802 of 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. 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. For those appliances that use multiple fuels, 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, on August 18, 2011, DOE announced its intention to use full-fuel-cycle measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51282 While DOE stated in that notice that it intended to use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (GREET) model to conduct the analysis, it also said it would review alternative methods, including the use of NEMS. After evaluating both models and the approaches discussed in the August 18, 2011 notice, DOE has determined NEMS is a more appropriate tool for this specific use. Therefore, DOE intends to use the NEMS model, rather than the GREET model, to conduct future FFC analyses. 77 FR 49701 (Aug. 17, 2012). DOE did not incorporate FFC measures into today's final rule because it did not want to introduce a new method in the final phase of a rulemaking. Rather, in today's rule, DOE continues to use its standard measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses.

4. Equipment Price Forecast

As noted in section IV.F.2, DOE assumed no change in transformer prices over the 2016–2045 period. In addition, DOE conducted sensitivity analysis using alternative price trends. Based on PPI data for electric power and specialty transformer manufacturing, DOE developed one forecast in which prices decline after 2010, and one in which prices rise. These price trends, and the NPV results from the associated sensitivity cases, are described in appendix 10–C of the final rule TSD.

5. Net Present Value of Customer 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. DOE estimates the NPV using both a 3-percent and a 7-percent real discount rate, in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[54] 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 is the rate at which society discounts future consumption flows to their present value.

H. Customer Subgroup Analysis

In analyzing the potential impacts of new or amended standards, DOE evaluates impacts on identifiable groups (i.e., subgroups) of customers that may be disproportionately affected by a national standard.

A number of parties expressed specific concerns about size and space constraints for network/vault transformers. (BG&E, No. 182 at p. 6; ComEd, No. 184 at p. 11; Pepco, No. 145 at pp. 2–3; PE, No. 192 at p. 8; Prolec-GE, No. 177 at p. 12)

For today's final rule, DOE evaluated purchasers of vault-installed transformers (mainly utilities concentrated in urban areas), represented by design lines 4 and 5, as a customer subgroup, and examined the impact of standards on these groups using the methodology of the LCC and PBP analysis. DOE examined the impacts of larger transformer volume with regard to costs for vault enlargement. DOE assumed that if the volume of a unit in a standard case is larger than the median volume of transformer designs for the particular design line, a vault modification would be warranted. To estimate the cost, DOE compared the difference in volume between the unit selected in the base case against the unit selected in the standard case, and applied fixed and variable costs. In the 2007 final rule, DOE estimated the fixed cost as $1,740 per transformer and the variable cost as $26 per transformer cubic foot.[55] For today's notice, these costs were adjusted to 2011$ using the chained price index for non-residential construction for power and communications to $1,886 per transformer and $28 per transformer cubic foot. DOE considered instances where it may be extremely difficult to modify existing vaults by adding a very high vault replacement cost option to the LCC spreadsheet. Under this option, the fixed cost is $30,000 and the variable cost is $733 per transformer cubic foot.

The customer subgroup analysis is discussed in detail in chapter 11 of the final rule TSD.

I. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of amended energy conservation standards on manufacturers of distribution transformers and to calculate the impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are data on the industry cost structure, product costs, shipments, and assumptions about markups and conversion expenditures. The key output is the INPV. Different sets of shipment and markup assumptions (scenarios) will produce different results. The qualitative part of the MIA addresses factors such as product characteristics, impacts on particular sub-groups of firms, and important market and product trends. The complete MIA is outlined in chapter 12 of the TSD.

2. Product and Capital Conversion Costs

New and 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 conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. DOE's estimates of the product and capital conversion costs for distribution transformers can be found in section V.B.2.a of today's final rule and in chapter 12 of the TSD.

a. Product Conversion Costs

Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with the new or amended energy conservation standard. DOE based its estimates of the product conversion costs that would be required to meet each TSL on information obtained from manufacturer interviews, the engineering analysis, and the NIA shipments analysis. For the distribution transformer industry, a large portion of product conversion costs will be related to the production of amorphous cores, which would require the development of new designs, materials management, and safety measures. Procurement of such technical expertise may be particularly difficult for manufacturers

[54] 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.*

[55] See section 7.3.5 of the 2007 final rule TSD, available at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/transformer_fr_tsd/chapter7.pdf.*

without experience using amorphous steel.

b. Capital Conversion Costs

Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new equipment designs can be fabricated and assembled. For capital conversion costs, DOE prepared bottom-up estimates of the costs required to meet standards at each TSL for each design line. To do this, DOE used equipment cost estimates provided by manufacturers and equipment suppliers, an understanding of typical manufacturing processes developed during interviews and in consultation with subject matter experts, and the properties associated with different core and winding materials. Major drivers of capital conversion costs include changes in core steel type (and thickness), core weight, core stack height, and core construction techniques, all of which are interdependent and can vary by efficiency level. DOE uses estimates of the core steel quantities needed for each steel type, as well as the most likely core construction techniques, to model the additional equipment the industry would need to meet the efficiencies embodied by each TSL.

3. Markup Scenarios

In the NOPR MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario, and (2) a preservation of operating profit markup scenario. These scenarios lead to different markups values, which, when applied to the inputted MPCs, result in varying revenue and cash flow impacts. While DOE has modified several inputs to the GRIM for today's final rule, it continues to analyze these two markup scenarios for the final rule. For a complete discussion, see the NOPR or chapter 12 of the TSD.

4. Other Key GRIM Inputs

Key inputs to the GRIM characterize the distribution transformer industry cost structure, investments, shipments, and markups. For today's final rule, DOE made several updates to the GRIM to reflect changes in these inputs since publication of the NOPR. Specifically, DOE incorporated changes made in the engineering analysis and NIA, including updates to the MPCs, shipment forecasts, and shipment efficiency distributions. In addition, DOE made minor changes to its conversion cost methodology in response to comments as described below. These updated inputs affected the values calculated for the conversion costs and markups described above, as well as the INPV results presented in section V.B.2.

5. Discussion of Comments

The following section discusses a number of comments DOE received on the February 2012 NOPR MIA methodology. DOE has grouped the comments into the following topics: Core steel, small manufacturers, conversion costs, and benefits versus burdens.

a. Core Steel

The issue of core steel is critical to this rulemaking. This section discusses comments related to steel price projections, steel mix and competition between suppliers, and steel supply and production capacity. Most of these issues are highly interconnected.

Steel Prices. Several stakeholders commented on the steel prices used by DOE. Prolec-GE believes that the steel supply assessment in appendix 3A of the TSD was too optimistic about supply and price in a post-recession global environment and that any analysis for higher than current level efficiencies should evaluate a much higher range of material price variance that what DOE used in the NOPR. (Prolec-GE, No. 52 at p. 13) APPA notes that the analysis in appendix 3A of the TSD provides good information about prices from 2006 to 2010, but it does not include information about the significant increase in prices compared to 2002–2003 levels.

Northeast Energy Efficiency Partnerships argued that, when faced with competition, conventional high-grade electrical steel prices could come down and compete effectively with the more efficient amorphous materials. (NEEP, No. 193 at p. 3) Earthjustice expressed similar sentiments, stating that the analysis conducted by DOE on DL1 presents an unrealistic picture of the LCC impacts of meeting TSLs 2 and 3 with conventional steels in that design line because competitive pressure from amorphous metal will likely reduce the price for grain-oriented electrical steels and, therefore, improve the LCC savings for consumers. (Earthjustice, No. 195 at p. 1–3)

DOE recognizes that steel prices have proven highly volatile in the past and could continue to fluctuate in the future for a variety of reasons, including macroeconomic factors, competition among steel suppliers, trade policy and raw material prices. With respect to Earthjustice's comment, while DOE agrees that the LCC is highly sensitive to relative steel price assumptions at certain TSLs, DOE notes that a decline in silicon transformer prices would be unlikely to materially change the slope of the silicon steel transformer cost curve. Therefore, the incremental costs (and LCC savings) would not change significantly. To NEEP's comment, DOE agrees that competition between silicon steel suppliers, the incumbent amorphous metal suppliers and new market entrants will impact future prices. However, DOE does not believe it is possible to predict the relative movements in these prices. Throughout the negotiation process, stakeholders have argued for different price points for different steels under different scenarios. The eventual relative prices of steels in the out years will be in part subject to the aforementioned market forces, the direction and magnitude of which cannot be known at this time. For these reasons, DOE performed a sensitivity analysis that included a wide range of potential core steel prices to evaluate their impact on LCC savings as discussed in section V.B.3.

Diversity of Steel Mix and Competition. Most stakeholders stated a preference for a market in which traditional and amorphous steel could effectively compete, but there was disagreement over which efficiency level would strike that balance, particularly for liquid-immersed distribution transformers. The various steel types that are available on the market for distribution transformers are listed in Table 5.10 in chapter 5 of the TSD. Stakeholders generally sought a standard that would allow manufacturers to use a diversity of electrical steels that are cost-competitive and economically feasible. This issue is critical to stakeholders for several reasons, including what some worried would be a lack of amorphous steel supply, a transition to a market that currently has only one global supplier with significant capacity, as well as forced conversion costs associated with the manufacturing of amorphous steel cores.

Both APPA and Adams Electric Cooperative (AEC) commented that it is important that DOE preserve the competitive market by allowing both grain-oriented steel and amorphous core transformers to be price competitive. APPA and AEC are concerned about the availability and price of the core materials if only one product is competitively viable because this will affect jobs for traditional steel manufacturers and also small transformer manufacturers that may not be able to afford or have the expertise to convert their plants to accommodate amorphous core construction. (APPA, No. 191 at p. 5; AEC, No. 163 at p. 3) Wisconsin Electric also stated that it is important to have a mix of suppliers available to keep the price of amorphous steel in check and to mitigate the risk of unforeseen situations, such as natural disasters. (Wisconsin Electric, No. 168 at p. 2)

Some stakeholders, in particular ACEEE, ASAP, NRDC, and Northwest Power and Conservation Council (NPCC), asserted that competition can still be maintained at efficiency levels higher than those proposed in the NOPR. These stakeholders believe that TSL 1 favors silicon steel and will, therefore, raise the price for silicon steel while relegating amorphous steel to niche status, relative to a higher TSL. They noted that industry sources and press accounts confirm that electrical steel is a very high profit margin product and the lack of strong competition for M3 in the current market appears to be contributing to very high M3 prices. (Advocates, No. 186 at p. 10) Therefore, the Advocates argued that a modified TSL 4 (EL2 for all design lines) for liquid-immersed transformers could be met using either amorphous metal or silicon steel, thereby increasing competition. ASAP had suggested during the NOPR public meeting that moving into a market where there would be three domestically based competitors would be a better competitive outcome than the status quo of two competitors who have the lion's share of the market. (ASAP, No. 146 at p. 38) In response to the supplementary analysis of June 20, 2012, the Advocates suggested the adoption of TSL C, which they believed would provide for robust competition among core material suppliers. (Advocates, No. 235 at p. 1) They also noted that TSL D, which consists of EL 2 for pad-mounted transformers and EL 1 for pole-mounted transformers, would favor the continued use of grain oriented electrical steel for the majority of the market and allow silicon steel and amorphous metal to reach rough cost parity for pad-mounted transformers. (Advocates, No. 235 at p. 4) ACEEE, ASAP, NRDC, and NPCC further cited some transformer manufacturers as saying TSL 4 or 3.5 (EL 2 or EL 1.5) for liquid-immersed transformers would lead to robust competition because a market currently served by two steel suppliers (AK Steel and ATI Allegheny Ludlum) would then be served by three since the amorphous metal supplier (Metglas) could compete. (Advocates, No. 186 at p. 10–11) Additional amorphous metal suppliers may also enter the market because barriers to entry into amorphous metal transformer production are, according to Metglas, quite limited. (Metglas, No. 102 at p. 2) Also, based on the results of an analysis conducted by an industry expert for ASAP, the Advocates believe that it would be very unlikely that TSL 4 standards from the NOPR for liquid-immersed transformers would result in amorphous metal market share exceeding 20 percent in the near- and medium-term due to the current dominant position of silicon steel, inertia in utility decision making, and the ability of steel makers to lower prices to protect against market share erosion. Furthermore, increases in the standards for LVDT and MVDT transformers, which have markets where amorphous metal does not compete and is not expected to compete at the levels proposed by DOE, will increase silicon steel tonnage. In the longer term, silicon steel manufacturers can make strategic investment decisions that will enable them to compete, such as increasing production of High B steel or entering amorphous metal production. (Advocates, No. 186 at pp. 12–13) Berman Economics also argued that competition between traditional and amorphous steel is still possible with higher standards for liquid-immersed transformers because, according to shipments data from ABB, TSL 4 has the greatest diversity of core materials. (Berman Economics, No. 221 at p. 7)

On the other hand, many stakeholders believe that competition among steel suppliers will not be possible at levels higher than those proposed in the NOPR. At the NOPR public meeting, ATI stated that the proposed standards maintain a competitive balance between alternative materials and grain-oriented electrical steel, which has adequate supply from annual global production levels exceeding two million metric tons and price competition from several producers. (ATI, No. 146 at p. 18) ATI believes that higher standards will result in cost-effective design options limited to amorphous metal cores for liquid-immersed transformers. Such a situation would cost U.S. jobs, increase the risk of supply shortages and disruptions, and create a non-competitive market for new liquid-immersed designs which ATI expects will eliminate any projected LCC savings. (ATI, No. 54 at p. 2) Furthermore, ATI stated that even TSL 1 may have adverse impacts on competition because the efficiency levels assigned to design lines 2 and 5 in TSL 1 were set well above the crossover point for competition between multiple core materials and therefore the implementation of TSL 1 would curtail the availability of multiple options for core material choices for liquid-immersed transformers. ATI did not support any of the new TSLs proposed in DOE's supplementary analysis, which were higher than TSL 1 and which would, according to ATI, have significant impacts on the competitiveness of grain-oriented electrical steel and result in nearly complete conversion of the liquid-immersed market to amorphous cores. (ATI Allegheny, No. 218 at p. 1) Instead, ATI proposed an alternative TSL which consists of what it believes are more accurate crossover points for the liquid-immersed design lines: EL 1.3 for DL 1, EL 0 for DL2, EL 0.7 for DL 3, EL 1 for DL 4, and EL 0.7 for DL 5. (ATI Allegheny, No. 218 at p. 1)

Cooper Power stated that the currently proposed efficiency levels are at the maximum levels that allow use of both silicon and amorphous core steels. Higher efficiency levels will tip the market in favor of amorphous materials that are not available in the quantities needed and do not have the desired diversity of suppliers to maintain a healthy market. (Cooper Power, No. 165 at p. 4) Cooper Power had found through one of its analyses that the crossover point at which transformer price is equivalent between M3 and amorphous was at EL 0.5 for all design lines 1, 3, 4, and 5 and EL 0.25 for DL2. According to Cooper Power, the best choice for raising the efficiency levels and keeping both M3 core steel and amorphous core steel competitive with one another would be to choose EL 0.5. (Cooper Power Systems, No. 222 at p. 2) During the NOPR public meeting, Cooper Power commented that, past EL 1, it is no longer a level playing field between amorphous and silicon core steel. (Cooper Power, No. 146, at p. 49–50) HVOLT also commented that the crossover point between M3 and amorphous is at EL 1, and it's a hard move to amorphous past that level. (HVOLT, No. 146 at p. 51) The United Auto Workers (UAW) is concerned that requiring efficiency levels beyond TSL–1 for liquid-immersed transformers would impose unwarranted conversion costs on transformer producers, force the use of amorphous metals that are not available in adequate supply, and create significant anticompetitive market power for the producer of amorphous metal electrical steel. (UAW, No. 194 at

p. 2) EEI is very concerned about the availability of steels if DOE decides to increase any efficiency levels above those proposed in the NOPR because, as DOE's life-cycle analyses have shown, the ''tipping'' point where many domestic steelmakers are not competitive is usually at levels that are equal to or less than TSL 1 for liquid-immersed transformers. Domestic steelmakers agreed, explaining that the anticompetitive ramifications of a decision to promulgate a standard greater than TSL 1 for the liquid-immersed market would not be economically justified. According to AK Steel and ATI, since amorphous metal is currently competitive but may not be in sufficient supply, and non-amorphous manufacturers may not be able to compete with amorphous metal on a first-cost basis beyond TSL 1, any decision by DOE to promulgate a standard greater than TSL 1 would transfer significant market power, including potential price increases, to the maker of amorphous metal. (AK Steel and ATI, No. 188 at p. 2–3) AK Steel also commented that DOE should finalize a standard equivalent to TSL 1 from the NOPR rather than adopt the new TSLs A through D proposed in the supplementary analysis because it believes that the new TSLs, which are more stringent, would have significant anticompetitive effects that will harm both electric utilities and the public through increased prices. (AK Steel, No. 230 at p. 12–13) NEMA supports the currently proposed efficiency levels because higher levels will tip the scale in favor of amorphous materials that are not available in the quantities needed and do not have the desired diversity of suppliers to maintain a healthy market. (NEMA, No. 170 at p. 14) In response to the supplementary analysis, NEMA argued that the new TSLs (with the exception of TSL A if DL 2 remains at EL 0) would all result in steel supply shortages or a bias in favor of amorphous. (NEMA, No. 225 at p. 4) AEC believes that DOE appropriately balanced high transformer efficiency with a viable competitive market in the NOPR. (AEC, No. 163 at p. 3) NRECA agreed, stating that DOE has achieved the correct balance of high transformer efficiency while maintaining a viable competitive market, because any efficiency level above those recommended in the NOPR will greatly impact competition and, therefore, affect jobs for steel manufacturers and small transformer manufacturers that may not have the resources to convert their plants to accommodate amorphous core construction. (NRECA, No. 228 at p. 4) Likewise, the United Steelworkers Union (USW) supports the currently proposed efficiency levels because they allow end-users to choose between competing technologies rather than relying on a single option. (USW, No. 148 at p. 2)

DOE recognizes the importance of maintaining a competitive market for transformer steel supply in which traditional steel and amorphous steel suppliers can both participate. This was a critical consideration in DOE's assessment of the rule's impact on competition. As with the discussion on future prices, the precise ''crossover point'' is variable depending on a number of factors, including firm pricing strategies, global demand and supply, trade policy, market entry, and economies of scale among producers and consumers of the core steel. The magnitudes of these potential influences on the cross-over point cannot be precisely known in advance.

DOE attempted to survey manufacturers about the mix of core steel used currently for transformers meeting various efficiency levels and also queried the industry about their expectations for core steel mix at those efficiencies should the next DOE standard require them. However, beyond those presentations made publicly by various manufacturers during the negotiations—which demonstrated conflicting views on the ''crossover point''—DOE could not gather sufficient data to calculate manufacturer expectations of the crossover point at various TSLs. While several stakeholders have pointed to the ''tipping point'' shown by the LCC's steel selection analysis as evidence that the market will transition to amorphous entirely for some design lines, DOE repeats here that not every possible design was analyzed and that the LCC tool is highly sensitive to price assumptions which have been shown to be extremely variable over time and among suppliers. Balancing all of the evidence in this docket, DOE believes that the levels established by today's final rule will maintain a choice of steel mix for the industry. As discussed in the weighing of benefits and burdens section (section IV.I.5.d), DOE remains concerned about the potential for significant disruption in the steel supply market at levels higher than those established by today's rule.

As for the conversion costs that may be required should some manufacturers decide to begin making, or to increase production of, amorphous core transformers, DOE accounts for them in the GRIM analysis.

Supply and Capacity. The ability of core steel producers to increase supply if necessary is another related key issue discussed by stakeholders. Some stakeholders were concerned that suppliers may not have the capacity to produce certain steels in quantities great enough to meet demand at higher efficiency levels, while other stakeholders believed that suppliers will be fully capable of expanding capacity as needed.

Several stakeholders expressed concerns about utilities being unable to serve customers due to steel supply constraints in the distribution chain. EEI stated that its members do not want to repeat the situation they faced in 2006–2008 when there were transformer shortages and utilities were told that there would be delays of months or even years before certain transformers would be available. (EEI, No. 185 at p. 10) APPA noted that the threat of transformer rationing may return in an improved economy and hamper the ability of utilities to meet their obligation to serve customers. (APPA, No. 191 at p. 10) Likewise, Consolidated Edison believes that the possible requirement to use higher grade core steels in order to achieve higher efficiencies may result in supply scarcity, increased costs, and tough competition for these materials after recovery from the global recession. (ConEd, No. 236 at p. 4) Commonwealth Edison Company is very concerned about the availability of a quality steel supply for the transformer manufacturing industry and that a limited supply of transformers will have a significant negative effect on the company's ability to provide safe and reliable electric service to its customers. (ComEd, No. 184 at p. 11) Howard Industries is also concerned about the limited availability of critical core materials such as M2 and amorphous, which could pose a large risk to the transformer and utility industries and may become a particularly troublesome issue if the economy and housing markets return to more normal levels. (Howard Industries, No. 226 at p. 2) In addition, the USW stated that the number of transformer producers with the equipment to build reliable transformers with amorphous ribbon cores is relatively small. Therefore, a sudden transition to amorphous ribbon would result in a fragile supply chain for distribution transformers, potentially leading to large cost increases and supply shortages that would place the security of the U.S. electrical transmission grid at risk. (USW, No. 148 at p. 2) ATI stated during the NOPR public meeting that a scenario in which grain-oriented electrical steel is not available as a core material option could result in a long-term situation where no domestic companies would produce the strategically important material for transformers that are the critical link in the U.S. electrical grid. (ATI, No. 146 at p. 19)

Some stakeholders also emphasized the importance of being able to use M3 steel, which is more readily available than other more efficient steels. Prolec-GE noted that silicon steel grades above M3 have significant supply limitations and predicted no change in that situation for the foreseeable future. Therefore, Prolec-GE continues to see the need for a balanced approach to higher efficiencies such that M3 silicon steel and amorphous metal can compete for a share of the liquid-immersed market, which would allow manufacturers to have a sufficient supply of these materials to serve customer requirements. (Prolec-GE, No. 52 at pp. 11–12) Progress Energy also stated that M2 core steel is in short supply because it is only a small part of a silicon core steel producer's output and M3 and M4 grades of core steel should be required for 85 percent or more of any required efficiency level so that utilities will not face shortage situations that would have negative impacts on grid reliability. (Progress Energy, No. 192 at pp. 7–8) Likewise, Power Partners voiced concern about the U.S. supply of core steel should DOE adopt an efficiency that requires the use of grades better than M3. Power Partners stated that the current domestic capacity for M2 will not support 100 percent of all liquid-immersed transformers and, therefore, recommended that DOE only consider efficiency levels that can be attained with M3 core steel with no loss evaluation. The grades better than M3 should be employed when the utility loss evaluation justifies its use. (Power Partners, No. 155 at pp. 3–4) Southern California Edison has stated that greater market demand for M2 core steel may create supply shortages and result in high steel prices. (Southern California Edison, No. 239 at p. 1) According to Central Moloney, M2 and higher grades of steel are premium products within the steel manufacturing process which comprise no more than 15 percent of overall steel production. Central Moloney is concerned that the marketplace will not be able to support the demand of these premium products if efficiency levels are increased. (Central Moloney, No. 224 at pp. 1–2)

Stakeholders have also expressed several concerns regarding the availability of steels supplied by foreign vendors, especially amorphous steel. Both Commonwealth Edison Company and Baltimore Gas and Electric Company stated that the overseas procurement of steel could result in specification issues and that there could be a negative impact on the U.S. electric grid if DOE sets a standard that requires the use of a specific core steel that is not readily available in the domestic market and which does not have a proven track record. (ComEd, No. 184 at p. 12 and BG&E, No. 182 at p. 7) Power Partners has stated that grades of grain-oriented electrical steel better than M2 for wound core applications are only available from international sources and supply capacity is very limited. (Power Partners, No. 155 at pp. 3–4) In addition, Progress Energy is concerned that amorphous and mechanically scribed core steel will not be available in sufficient quantities because domestic transformer vendors rely on basically one amorphous core steel provider. This supplier may not have the capacity to provide enough amorphous material to meet demand from all U.S. transformer manufacturers as well as overseas business if the efficiency levels are increased beyond EL 1 for liquid-immersed distribution transformers. (Progress Energy, No. 192 at pp. 7–8) ABB has indicated that amorphous steel is a sole source product for the U.S., and, as demand increases for it, there could be a tight global supply as well as upward price pressure. (ABB, No. 158 at p. 8) ABB has also expressed concerns about mechanically scribed steel. This type of steel has only four global suppliers, and its availability may be subject to international trade restrictions. (ABB, No. 158 at p. 8) According to Cooper Power Systems, ZDMH is in large part unavailable in the U.S. and should therefore represent only a small fixed percentage of overall usage. (Cooper Power Systems, No. 222 at p. 2)

However, some stakeholders are more confident that the supply of higher efficiency steels would increase to meet demand due to higher standards. ACEEE, ASAP, NRDC, and NPCC believe that it is highly unlikely that amorphous production will not expand in response to higher standards because: (1) The U.S. producer of amorphous metal has demonstrated its ability to add capacity over the past several years as producers of high-value electricity (e.g., wind producers) have favored amorphous metal products, and (2) other manufacturers are exploring amorphous production and there are no legal barriers to entry for new competitors. (Advocates, No. 186 at p. 11) The Advocates also noted that one of the largest global suppliers of silicon steel for transformers, POSCO (formerly Pohang Iron and Steel Company), is entering the amorphous metal market. The company approved a plan for commercializing amorphous metal production in 2010 and will soon begin production and marketing of amorphous metal with plans to produce up to 1 kiloton (kt) in 2012, 5 kt in 2013, and 10 kt in 2014. (Advocates, No. 235 at p. 3) Schneider Electric stated that, with the exception of amorphous, there are sufficient suppliers worldwide (Europe and Asia) who have either increased capacity or who have near term plans to increase capacity to meet the growing demand for high-grade steels. The company feels it is better to allow global market conditions to dictate business plans rather than the DOE because manufacturing and freight costs play a lesser role than supply and demand in determining the final price for high-grade steels, whether domestic or foreign, as long as there are sufficient suppliers worldwide. (Schneider, No. 180 at p. 6) In addition, Hydro-Quebec has stated that the equipment for making amorphous steels is mainly used to serve the distribution transformer market, which allows amorphous steel to be less influenced by other non-transformer markets that may impact steel price and availability. Amorphous steel production lines are also much smaller than silicon steel lines, thereby allowing amorphous steel makers to add production capacity by small increments with relatively low capital expenditures and in a relatively short time frame. Hydro-Quebec therefore believes that amorphous steel production can be tightly connected with increasing demand. (Hydro-Quebec, No. 125 at p. 2) Metglas, has also stated that an increase in capacity to even 100 percent of 2016 demand would only require an approximately $200M investment in amorphous metal casting capacity and an even smaller total industry investment by core/transformer makers in amorphous metal transformer manufacturing capacity. Metglas further stated that it has a technology transfer program to assist any U.S. transformer maker in quickly progressing into production of amorphous metal-based transformers. (Metglas, No. 102 at p. 2) Berman Economics supports Metglas' position, arguing that Metglas has demonstrated its willingness and capability to increase capacity as a result of the 2007 Final Rule and should be expected to do so again, particularly considering the financial resources available to Metglas from its parent, Hitachi. Moreover, since there are no patent restrictions on amorphous steel, there is nothing to prevent silicon steel from diversifying to include an amorphous line should it choose to do so. (Berman Economics, No. 150 at p. 10) Berman Economics also believes that DOE improperly assumes that increased use of amorphous will reduce silicon steel production in an effort to ensure that silicon steel production does not suffer profit losses as amorphous becomes more competitive. Additionally, Earthjustice claimed that DOE did not rationally analyze the potential impacts associated with steel production capacity constraints because, according to the NOPR, adopting TSLs 2 or 3 for liquid-immersed transformers would lead to shortages of amorphous metal such that grain-oriented electrical steel cores would have to be used in non-cost-effective applications, but in the TSD, those TSLs would split the market between amorphous and grain-oriented steels and DOE expects minimal core steel capacity issues at TSLs that do not force the entire market into amorphous steel usage. (Earthjustice, No. 195 at pp. 1–2)

DOE is aware that there is currently only one global supplier of amorphous steel with any significant capacity and that the parent company is foreign-owned (although a substantial share of its production takes place domestically through its U.S. subsidiary). At the same time, a few other steel producers have announced plans to begin, or have recently begun, very limited production of amorphous metal. DOE is also aware that there are only a few suppliers for mechanically scribed steel and that some of these suppliers are also foreign-owned. Given the lack of suppliers of domain-refined (e.g., H0, ZDMH) and amorphous steels, DOE agrees that the amended energy conservation standards should provide manufacturers with the option to cost-effectively use grain-oriented silicon steels, which have fewer supply constraints. This would help ensure that utilities have access to transformers, particularly in the event of stronger economic growth (a driver of transformer demand) or a natural disaster, both concerns raised by commenters. Furthermore, DOE understands that M2 cannot be produced at the quantities equivalent to current M3 yields due to the nature of the silicon steel production process. Given these facts, DOE concluded that a standard that could not be achieved by M3 would not be economically justified. On the other hand, DOE also acknowledges that the current amorphous supplier may be able to expand capacity to meet additional demand and a few other companies have begun the initial stages of developing capacity. The eventual steel quality and production capacity of these emerging amorphous sources are unknown at this time. Therefore, DOE has been careful in selecting a TSL that would allow manufacturers to use not only amorphous and mechanically scribed steel,that is currently produced in limited quantities, but also grain-oriented steels.

DOE believes that the Earthjustice comment that DOE did not rationally analyze the potential impacts associated with steel production capacity constraints actually refers to two related but separate issues in the NOPR and NOPR TSD. In the TSD, DOE explains that the availability of total core steel would not be an issue until TSL 4 because both conventional and amorphous steels would be available to use until that point. In the NOPR, DOE explains that the availability of amorphous steel may be an issue at TSLs 2 and 3, and that manufacturers may need to use other types of steels, such as M3, which are not the lowest cost options. These statements are not contradictory because, although amorphous steel capacity may not be able to expand to meet all demand at TSLs 2 and 3, that does not imply that total core steel capacity would be insufficient because manufacturers still have the option of using M3 or M2 or other steels at these levels.

b. Small Manufacturers

An important area of discussion among stakeholders is the impact of energy efficiency standards on small manufacturers. At the NOPR public meeting, ASAP had suggested that DOE should do additional work to better document and understand the scale of the impacts on small manufacturers. (ASAP, No. 146 at p. 170)

Some stakeholders expressed concern that standards higher than those proposed in the NOPR would have a significant negative impact on small manufacturers. NEMA is very concerned with the possibility that higher efficiency standards will negatively impact small manufacturing facilities and may drive some small companies, in particular LVDT transformer manufacturers, out of business. (NEMA, No. 170 at pp. 4, 8) In addition, at least one small NEMA manufacturer of liquid-immersed distribution transformers has reported that it cannot stay in business at levels higher than EL1. (NEMA, No. 170 at p. 6) APPA is also concerned about small manufacturer impacts resulting from the use of amorphous steel, stating that small transformer manufacturers that may not be able to afford or have the expertise to convert their plants to accommodate amorphous core construction may be forced to go out of business. (APPA, No. 191 at p. 5) HVOLT commented that producing stacked core products with mitering would take millions of dollars and small manufacturers in some states cannot afford that investment, and may be forced to go out of business. (HVOLT, No. 146 at pp. 50–51) Furthermore, at higher efficiency levels, even if small manufacturers can continue to use butt-lapping, they may not be able to sell their transformers at a price where material costs are recovered. (HVOLT, No. 146 at p. 151)

However, other stakeholders have suggested that small manufacturer effects have been overemphasized in DOE's analysis. ACEEE, ASAP, NRDC, and NPCC disagreed with DOE's small business analysis, claiming that it overstates impacts on small business manufacturers of LVDT transformers. The NOPR record and an investigation by the Advocates indicate that the vast majority of covered transformers are manufactured by a handful of large manufacturers with all of their major production facilities in Mexico. Since small, domestic manufacturers cannot compete on price with Mexican production facilities, domestic manufacturers focus on specialty transformers which are generally outside the scope of the regulation or on high-efficiency offerings. (Advocates, No. 186 at pp. 5–6) Furthermore, even if DOE finds that there are a significant number of small manufacturers with U.S. production facilities making covered LVDT transformers, the Advocates suggest that DOE should still adopt TSL 3 because any small manufacturer with long term viability in the distribution transformer market can build compliant transformers. DOE's record indicates that the least-cost option for building LVDT transformers at TSL 3 entails step-lap mitering and some small manufacturers already have mitering equipment. The Advocates commented that for companies that currently lack mitering machines, industry experts have testified that a step lap mitering machine costs between $0.5 million and $1 million, which is a small investment that should be well within reach for viable manufacturing companies, even if they are small. The Advocates also indicate that DOE may have placed too much emphasis on small business impacts in its decision-making criteria. Companies also have the option of sourcing their cores from third party suppliers, who can obtain better materials prices than all but the largest transformer makers, regardless of the efficiency levels chosen. In fact, they cite to the NOPR to support the notion that market pressures are already likely to be pushing small transformer manufacturers to purchase sourced cores regardless of the efficiency levels adopted. (Advocates, No. 186 at p. 6) Furthermore, although small manufacturers may not get the same treatment from steel suppliers as large manufacturers do, small manufacturers will face this disadvantage regardless of the standard level chosen. (Advocates, No. 186 at p. 5)

Similar sentiments were expressed by California Investor Owned Utilities (CA IOUs). According to the CA IOUs, although DOE repeatedly emphasizes the concern that small manufacturers may be disproportionately impacted by higher standard levels and leans on this concern as justification for selecting TSL 1 for low-voltage dry-type transformers, there are actually very few small manufacturers in this market and those small manufacturers that do exist primarily focus on design lines that are exempted from coverage. The CA IOUs commented that some small manufacturers that do produce covered transformers are focusing on high efficiency NEMA Premium® transformers, indicating that smaller manufacturers are already capable of producing higher efficiency transformers. Furthermore, small manufacturers could source their cores, and many are currently doing so today, which offsets any need to upgrade core construction equipment. (CA IOUs, No. 189 at pp. 2–3)

Also, Earthjustice has commented that DOE has arbitrarily relied on impacts on small manufacturers in rejecting stronger standards for low-voltage dry-type (LVDT) units despite there being few, if any, small manufacturers of this equipment who are likely to be impacted. DOE has not explained why sourcing cores is not an acceptable option for any small manufacturer and, given the evidence in the TSD that sourcing cores is a more profitable approach for small manufacturers of LVDTs, DOE's reliance on the adverse financial impacts to small manufacturers associated with producing such cores in-house in rejecting stronger LVDT standards is unreasonable. (Earthjustice, No. 195 at pp. 3–5)

NEEP has suggested that DOE should not sacrifice large national benefits to provide ill-defined benefits for a small number of manufacturers. Even if some domestic small manufacturers may be affected by the new standards, DOE should do a more comprehensive analysis of how much the standards would impact those small manufacturers. The investments needed to meet new standards may be affordable for companies which have covered transformers as a significant part of their business, and companies that have covered transformers as a small portion of their business may choose to exit this part of the market or source their cores. (NEEP, No. 193 at pp. 4–5)

DOE understands that small companies face additional challenges from an increase in standards because they are more likely to have lower production volumes, fewer engineering resources, a lack of purchasing power for high performance steels, and less access to capital.

For liquid-immersed distribution transformers, DOE does not believe that small manufacturers will face significant capital conversion costs at TSL 1 because they can continue to produce silicon steel cores using M3 or better grades rather than invest in amorphous technology should they make that business decision. Alternatively, they could source their cores, a common industry practice.

For the LVDT market, DOE conducted further analysis based on comments received on the NOPR to reevaluate the impact of higher standards on small manufacturers. Although there may not be many small LVDT manufacturers that produce covered equipment in the U.S. and small manufacturers may hold only a low percentage of market share, the Department of Energy does consider impacts on small manufacturers to be a significant factor in determining an appropriate standard level. As discussed in the engineering analysis, because commenters suggested that EL3, the efficiency level selected at TSL 2 for DL7 (equivalent to NEMA Premium®), could be achieved with a butt-lap design, DOE further investigated the efficiency limits of butt-lapping potential. The primary reason that DOE proposed TSL 1 over TSL 2 in the NOPR was because it did not appear that TSL 2 could be met using butt-lapping technology, which would have caused undue hardship on small manufacturers that utilize this technology. However, in response to comments from the NOPR, DOE analyzed additional design option combinations using butt-lapping technology for DL 7 in its engineering analysis and determined that EL 3 can still be achieved without the need for mitering by using higher grade steels. While these would likely not be the designs of choice for high-volume manufacturers because the capital cost of a mitering machine has a much lower per unit cost given their larger volumes, this option may allow low-volume players, such as small manufacturers, to avoid investing in mitering machines or sourcing their cores due to financial constraints. However, at TSL 3 and higher, manufacturers may not be able to continue using butt-lapping technology with steels that are readily available.

Although sourced cores may be the most cost-effective strategy in the near term, some manufacturers indicated during interviews that production of cores is an important part of the value chain and that they could ill-afford to cede it to third parties. On the other hand, some manufacturers indicated they are able to successfully compete because of their sourcing strategies, not in spite of them, because they can meet a variety of customer needs more quickly and cheaply than would otherwise be possible. Particularly because most small U.S. LVDT manufacturers are heavily involved in the transformer market not otherwise covered by statute, which constitutes roughly 50 percent of all LVDT sales, DOE believes that sourcing DOE-covered mitered cores represents a viable strategic alternative for small LVDT manufacturers, given that it is a common industry business strategy for low volume product lines.

In conclusion, DOE believes that TSL 2, the level established by today's standards, affords small LVDT transformer manufacturers with several strategic paths to compliance: (1) Investing in mitering capability, (2) continuing to use low-capital butt-lap core designs with higher grade steels, (3) sourcing cores from third-party core manufacturers, or (4) focus on the exempt portion of the market.

c. Conversion Costs

Berman Economics questioned DOE's methodology for calculating conversion costs, which was described in section IV.I.3.c of the NOPR. Berman argued that DOE provided unreasonable estimates of conversion costs because DOE based estimates on an arbitrary percent of total R&D expenditures across all equipment regulated by DOE. Therefore, the conversion cost estimates are not relevant to the proposed regulatory action. (Berman Economics, No. 150 at pp. 14–15)

In response, the percentages that DOE used to determine product conversion costs for liquid-immersed transformer manufacturers were based solely on information relevant to the distribution transformer industry, not for all equipment regulated by DOE. DOE's estimates for product conversion expenses for liquid-immersed distribution transformer manufacturers would be based upon the extent to which the industry would need to convert to amorphous technology. This methodology is similar to the one used for the 2007 final rule but modified to reflect feedback from manufacturers during interviews and to consider the technology required to meet the efficiency levels from the current rulemaking.

Berman Economics also commented that DOE's estimates of stranded assets were illogical for production, financial, and corporate strategy reasons. From a production perspective, there is likely to be a net increase in demand for silicon steel at EL 2 for liquid-immersed transformers so assets such as annealing ovens would not be stranded. Berman Economics stated most annealing ovens are very old and have already been depreciated, and manufacturing investment may be expensed in the year purchased according to current tax laws, so the cost of all recently purchased annealing ovens has already been recovered. From a strategic perspective, if a manufacturer chooses not to offer an amorphous line of products, DOE should not put itself in a position to favor that manufacturer's strategy over another. Furthermore, Berman Economics stated that DOE based stranded assets on an arbitrary percent of new capital conversion costs which may have been a holdover from the decision on microwave ovens. (Berman Economics, No. 150 at pp. 15–16)

DOE agrees that the calculations in the NOPR for stranded assets were incorrectly derived in the GRIM and has revised the model for the final rule. For the final rule, stranded assets in the standards case are derived from the share of the industry's net property, plant and equipment (PPE) that is estimated to no longer be useful due to energy conservation standards. The change has no substantial effect on the overall results. See TSD chapter 12 for more details.

Berman Economics also stated that DOE has overestimated capital conversion costs because the Department assumed a 100 percent front-load in investment prior to the 2016 effective date rather than a least-cost method of financing, such as a long-term loan. (Berman Economics, No. 150 at p. 16)

Accounting for investments in the time frame between the effective date of today's rule and the rule compliance date is the accepted methodology vetted during the preliminary analysis and the standard model used for DOE rulemakings. This methodology also considers the possibility that some manufacturers, such as small manufacturers, may have difficulty obtaining loans.

In addition, Berman Economics argued that an increased market demand for amorphous steel relative to silicon steel may reduce investment expenditures rather than increase them because the annealing oven for an amorphous steel core costs substantially less than the annealing oven for a silicon steel core. Some transformer manufacturers may also be able to source cores, which, Berman Economics stated, DOE incorrectly considered an undesirable market activity. Berman Economics noted that an outsourcing opportunity allows manufacturers to specialize, use cash for other strategic purposes, and pursue multiple objectives. (Berman Economics, No. 150 at pp. 16–17)

DOE takes into account conversion costs associated with a given TSL. While the cost of a single annealing oven for an amorphous steel core may be less than the cost of a single annealing oven for a silicon steel core, other factors, particularly throughput levels, associated tooling, and the R&D expenses allocated to the development of new designs and production processes, also drive conversion costs calculations.

With respect to core sourcing, as with the above discussion related to the LVDT market, DOE notes that it is not making any judgment on the value of one business strategy versus another. Whether sourcing cores is a viable option for any given manufacturer is a decision for each manufacturer in the context of its unique environment. However, during interviews, some manufacturers indicated that production of cores is an important part of the value chain and doubted their long-term viability should they outsource that function.

Finally, Berman Economics has noted that the logic explained by DOE that more stringent levels of efficiency are associated with larger adverse industry impacts does not hold true in the GRIM, which indicates that the model contains a multiplicity of unknown logic errors and its results must be viewed as spurious. (Berman Economics, No. 150 at p. 18)

Although higher efficiency levels are often correlated with greater adverse industry impacts, certain offsetting factors based on DOE's markup assumptions may result in deviations from this pattern. For example, in the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels so that, as production costs increase with efficiency, the absolute dollar markup increases as well. Therefore, the highest efficiency levels do not result in the highest drop in INPV because manufacturers are able to compensate for higher conversion costs by charging higher prices.

6. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 65 percent of liquid-immersed distribution transformer sales, 75 percent of medium-voltage dry-type transformer sales, and 50 percent of low-voltage dry-type transformer sales. These interviews were in addition to those DOE conducted as part of the engineering analysis. DOE outlined the key issues for the rulemaking for manufacturers in the NOPR. 77 FR 7282 (February 10, 2012). DOE considered the information received during these interviews in the development of the NOPR and this final rule.

7. Sub-Group Impact Analysis

DOE identified small manufacturers as a subgroup in the MIA. DOE describes the impacts on small manufacturers in section VI.B. below.

J. Employment Impact Analysis

Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new equipment; and (4) the effects of those three factors throughout the economy. DOE's employment impact analysis addresses these impacts. No public comments were received on this analysis.

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). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of 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.[56] 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 may increase because of shifts in economic activity resulting from amended standards for transformers.

For the standard levels considered in today's 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). 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 the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 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 the final rule, DOE used ImSET only to estimate short-term employment impacts.

For more details on the employment impact analysis, see chapter 13 of the final rule TSD.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry that would result from the adoption of new or amended standards. To calculate this, DOE first obtained the energy savings inputs associated with efficiency improvements to the considered products from the NIA. Then, DOE used that data in 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. Finally, DOE calculates the utility impact analysis by comparing the results at each TSL to the latest *AEO* Reference case. For the final rule, the estimated impacts for the considered standards are the differences between values derived from NEMS–BT and the values in the *AEO 2012* reference case.

Chapter 14 of the final rule TSD describes the utility impact analysis. No public comments were received on this analysis.

L. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, SO_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 transformers 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 *AEO 2012,* which generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of December 31, 2011.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap and trading programs. 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 were also limited under the Clean Air Interstate Rule (CAIR), which created an allowance-based trading program that operates along with the Title IV program. 70 FR 25162 (May 12, 2005) CAIR was remanded to the U.S. Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in 2008, but it remained in effect. On July 6, 2011 EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). The version of NEMS–BT used for today's rule assumes the implementation of CSAPR.[57]

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. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that no reductions in power sector emissions would occur for SO_2 as a result of standards.

Beginning in 2015, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants, which were announced by EPA on December 21, 2011. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate

[56] 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.

[57] On December 30, 2011, the D.C. Circuit stayed the new rules while a panel of judges reviews them, and told EPA to continue administering CAIR. See *EME Homer City Generation, LP* v. *EPA,* Order, No. 11–1302, Slip Op. at *2 (D.C. Cir. Dec. 30, 2011). On August 21, 2012, the D.C. Circuit vacated CSAPR. *See EME Homer City Generation, LP* v. *EPA,* No. 11–1302, 2012 WL 3570721 at *24 (D.C. Cir. Aug. 21, 2012). The court ordered EPA to continue administering CAIR. *AEO 2012* had been finalized prior to both these decisions, however. DOE understands that CAIR and CSAPR are similar with respect to their effect on emissions impacts of energy efficiency standards.

standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2012* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2015. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, NEMS shows a reduction in SO_2 emissions when electricity demand decreases (*e.g.,* as a result of energy efficiency standards). Emissions will be far below the cap that would be established by CSAPR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, DOE believes that efficiency standards will reduce SO_2 emissions in 2015 and beyond.

Under CSAPR, there is a cap on NO_X emissions in 28 eastern States and the District of Columbia. Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CSAPR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in today's rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. For this rulemaking, DOE estimated mercury emissions reductions using the NEMS–BT based on *AEO 2012,* which incorporates the MATS.

Chapter 15 of the final rule TSD provides further information on the emissions analysis.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the considered TSLs. To make this calculation similar to the calculation of the NPV of customer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this rulemaking.

For CO_2, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by a government interagency process. A summary of the basis for those values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 16 of the final rule TSD.

1. Social Cost of Carbon

Under section 1(b)(6) of Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), 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 the 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 dioxide 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 [58] 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 rulemaking, and DOE does not attempt to answer that question here.

[58] National Research Council. ''Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.'' National Academies Press: Washington, DC 2009.

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 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 model year 2011 CAFE final rule, the Department of Transportation (DOT) used both a ''domestic'' SCC value of $2 per metric ton of CO_2 and a ''global'' SCC value of $33 per metric ton of CO_2 for 2007 emission reductions (in 2007$), increasing both values at 2.4 percent per year. It also included a sensitivity analysis at $80 per metric ton of CO_2.[59] 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 $7 per metric ton of CO_2 (in 2006$, with a range of $0 to $14 for sensitivity analysis) for 2011 emission reductions, also increasing at 2.4 percent per year.[60] 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 $20 per metric ton CO_2 for 2007 emission reductions (in 2007$). 73 FR 58772, 58814 (Oct. 7, 2008). In addition, EPA's 2008 Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act identified what it described as ''very preliminary'' SCC estimates subject to revision. 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per metric ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ 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$) 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 considered for this proposed 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.[61] 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 four 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 percent, 3 percent, 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. For emissions (or emission reductions) that occur in later years, these values grow over time, as depicted in Table IV.9. 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 effects,[62] although preference is given to consideration of the global benefits of reducing CO_2 emissions.

[59] 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: *http://www.nhtsa.gov/fuel-economy*).

[60] 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: *http://www.nhtsa.gov/fuel-economy*).

[61] The models are described in appendix 15–A of the final rule TSD.

[62] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative.

TABLE IV.9—SOCIAL COST OF CO_2, 2010–2050

[in 2007 dollars per metric ton]

Year	Discount Rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th Percentile
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 metric 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 2011$ using the GDP price deflator. For each of the four cases specified, the values used for emissions in 2011 were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided (values expressed in 2011$).[63] To monetize the CO_2 emissions reductions expected to result from amended standards for distribution transformers, 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 final rule TSD, appropriately escalated to 2011$. 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 each SCC value.

2. Valuation of Other Emissions Reductions

As noted above, new or amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's rule using a range of dollar per ton values cited by OMB.[64] These values, which range 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 $4,623 per ton in 2011$), are based on estimates of the mortality-based benefits of NO_X reductions from stationary sources made by EPA. In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the above values for NO_X, one using a discount rate of 3 percent and the other using a discount rate of 7 percent.[65]

Commenting on the NOPR, APPA stated that DOE has significantly overstated the environmental benefits from NO_X reduction attributed to the efficiency levels in the proposed rule. APPA suggested that DOE use emissions allowance prices from EPA's Clean Air Interstate Rule and the NO_X Budget Trading Program, which averaged $15.89 per ton in 2011. (APPA, No. 191 at p. 2)

In response, DOE disagrees with APPA's claim that ''[t]hese emissions markets and their subsequent prices were designed to monetize the environmental cost of polluting in its entirety.'' Emissions allowance prices in any given market are a function of several factors, including the stringency of the regulations and the costs of complying with regulations, as well as the initial allocation of allowances. The prices do not reflect the potential damages caused by emissions that still take place. There is extensive literature on valuation of benefits of reducing air pollutants, including valuation of reduced NO_X emissions from electricity generation.[66] The values that DOE has used are consistent with the estimates in the literature.

DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it monetizes Hg in its rulemakings.

N. Labeling Requirements

In the NOPR, DOE responded to comments regarding the classification and labeling of rectifier and testing transformers. In response to these comments, DOE acknowledged that the proposed additions to the definitions helped to clarify ''rectifier'' and ''testing transformers'' and proposed to amend the definitions accordingly.

[63] 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.

[64] 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, Washington, DC Page 64.

[65] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

[66] *See* e.g., Burtraw, Dallas, Karen Palmer, Ranjit Bharvirkar, and Anthony Paul (2001). Cost-Effective Reduction of NO_X Emissions from Electricity Generation. Discussion Paper 00–55REV. Resources for the Future, Washington, DC.

Cooper Power expressed support for the plan DOE set forth in the NOPR to clarify rectifier and testing transformers. (Cooper, No. 165 at p. 2) Howard Industries also expressed support, noting that while they do not manufacture rectifier or testing transformers, they find DOE's nameplate request to ''indicate that they are for such purposes exclusively'' to be acceptable. (HI, No. 151 at p. 12) Earthjustice commented that the addition of labeling requirements for rectifier and testing transformers can help prevent misapplication of these exempt products, but they feel additional changes, such as requiring any print or electronic marketing for such units to indicate their use specifically, may also be necessary to ensure enforcement. (Earthjustice, No. 195 at p. 5; Earthjustice No. 146 at p. 44) However, Progress Energy commented that rectifier and testing transformers are already very specialized and usually more expensive than distribution transformers; therefore, there is a very low chance of a utility attempting to replace a distribution transformer with one of these transformers. (PE, No. 192 at p. 4) APPA concurred, noting that they were unaware of rectifier or testing transformers being used as a loophole. (APPA, No. 191 at p. 6) Similarly, HVOLT pointed out that the physical differences between rectifier and distribution transformers would be fairly obvious without a nameplate marking. Furthermore, they feel that adding the word ''rectifier'' to the nameplate would only add more congestion. (HVOLT, No. 146 at p. 46)

In response to the NOPR, many stakeholders expressed their support for clearly identifying transformers excluded from DOE standards through a standardized labeling system. ABB recommended that the text ''DOE Excluded: Transformer type'' be included on the nameplate for all of the excluded type transformers, and suggested that this labeling requirement be added to CFR part 429. (ABB, No. 158 at p. 5) ABB also noted that they agree with the proposal to not set standards for step-up transformers, and that all step-up transformers be identified on the nameplate with uniform language. (ABB, No. 158 at p. 6) NEMA agreed with ABB, stating that ''labeling should be applied in a consistent manner for all designated non-regulated distribution transformers'' and suggested the following language be used: ''This _____Transformer is NOT intended for use as a Distribution Transformer per 10 CFR 431.192'' (NEMA, No. 170 at p. 7) Prolec-GE and PEMCO expressed similar ideas, both commenting that all excluded transformers should be identified by type and indicate that they are excluded from standards. (PEMCO, No. 183 at p. 2; Prolec-GE, No. 177 at p. 7) Schneider concurred, stating ''all non-regulated transformers should require labeling—not just rectifier and testing transformers.'' (Schneider, No. 180 at p.3)

Prolec-GE encouraged DOE to establish labeling requirements or guidelines for covered products for use in the United States. They believed that, at present, without specifications for labeling products, those charged with certification, compliance and enforcement would have difficulty identifying which products were to meet which standards a difficult time with inconsistent labeling. (Prolec-GE, No. 177 at pp. 16–17) Schneider Electric also expressed that regulated products should have labeling rules with the following language ''DOE 10 CFR PART 431 COMPLIANT.'' Schneider would also like DOE certification regulations (10 CFR part 429) expanded to include non-regulated products. (Schneider, No. 180 at p. 3)

GE commented that refurbished units should be labeled as such and have the original manufacturer's nameplate removed. (GE, No. 146 at p. 114)

DOE had initially considered amending the definitions of ''rectifier transformer'' and ''testing transformer'' to include a labeling requirement. Commenters, however, have pointed out that a number of transformer types would benefit from a clear set of labeling requirements, which could aid manufacturers, consumers, and DOE itself in determining whether a given sample is covered or determined by the manufacturer as meeting the standards. Given the breadth of the issue, DOE makes no changes to labeling requirements in today's rule, but may address the matter of distribution transformer labeling in a future rulemaking. DOE appreciates the comments and feedback regarding labeling supplied by the stakeholders. Issues regarding labeling, compliance, and enforcement may, however, be considered in a different proceeding.

O. Discussion of Other Comments

Comments DOE received in response to the NOPR analysis on the soundness and validity of the methodologies and data DOE used are discussed in previous parts of section IV. Other stakeholder comments in response to the NOPR addressed specific issues associated with amended standards for transformers. DOE addresses these other comments below.

1. Supplementary Trial Standard Levels

DOE created TSLs that each consist of specific efficiency levels for a set of design lines. For the NOPR, DOE examined seven TSLs for liquid-immersed distribution transformers, six TSLs for low-voltage dry-type distribution transformers, and five TSLs for medium-voltage dry-type distribution transformers.

For liquid-immersed distribution transformers, joint comments submitted by ASAP, ACEEE, NRDC and NPCC recommended that DOE modify TSL 4 to represent their collective final position from the Negotiated Rulemaking, which advocated including EL 2 for all liquid-immersed distribution transformer design lines. (In the NOPR, DOE misstated and analyzed the Advocates collective final position from the Negotiated Rulemaking as EL3 for all liquid-immersed distribution transformer design lines.). They also recommended that DOE examine a TSL 3.5 level, which would correspond to EL 1.5 across the board. (ASAP, ACEEE, NRDC, NPCC, No. 186 at p. 9)

In response to these comments DOE considered four new TSLs, labeled A, B, C and D, to explore possible energy savings below EL 2. TSL C, consisting of EL 2 for all liquid-immersed distribution transformer design lines, correctly represents the collective final position of ASAP, ACEEE, NRDC, and NPCC in the negotiations. DOE presented these new TSLs to stakeholders at a public meeting on June 20, 2012.

Several parties stated that these new TSLs, while being technologically feasible, would present issues due to increased transformer size and weight. NRECA, Howard Industries, and NEMA stated that this issue would increase the frequency of pole replacement by utilities. (NRECA, No. 228 at p. 2; HI, No. 218 at p.1; NEMA, No. 225 at p. 6) Central Maloney commented that their designs at the new TSLs exceeded customer weight specifications for their single-phase, pole-mounted distribution transformers at various kVA capacities. (CM, No. 224 at p.3) Others stated that the economic benefits of TSLs B through D could only be realized with core steels other than M3 (NEMA, No. 225 at pp. 4, 5; ATI No. 218 at p. 1), which could transfer significant market power to producers of SA1 core steel (AK, No. 230 at p. 4) and lead to unintended anti-competitive results. (ATI, No. 218 at p. 1; AK, No. 230 at p. 5)

DOE concluded that all of these new TSLs would result in similar burdens as the TSLs 2, and 3 that were analyzed in the NOPR. As discussed further in section 5.C.1 of this final rule, all of these TSLs would face issues regarding the type of steel used in liquid-immersed transformers. DOE is concerned that the current supplier of amorphous steel, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that might be needed by transformer manufacturers before 2015. Although the industry can manufacture liquid-immersed distribution transformers at TSL 3 from M3 or lower grade steels, the positive LCC and national impacts results are based on lowest first-cost designs, which include amorphous steel for all the design lines analyzed. If manufacturers were to meet standards at TSL 3 using M3 or lower grade steels, DOE's analysis shows that the LCC impacts are negative. Given that the recommended TSLs face similar issues as TSL 3, DOE did not incorporate them into the final rule.

2. Efficiency Levels

ASAP, ACEEE, NRDC and NPCC stated that DOE has not evaluated the potential impacts of the proposed standards for liquid-immersed distribution transformers since the proposed standard levels are not the same as the levels in TSL 1 for equipment class 1. They said that DOE's final standard must be based on analysis and results for the actual efficiency levels established by the final rule. (ASAP, ACEEE, NRDC, NPCC, No. 186 at p. 9) Similarly, NEEP stated that the proposed TSL 1 for liquid-immersed distribution transformers did not have all the corresponding ELs for the various design lines. It noted that DOE proposed 98.95 percent for design line 2, which does not correspond to any EL. (NEEP, No. 193 at p. 2)

In response to these comments, for this final rule, DOE analyzed the actual efficiency ratings proposed in the NOPR for equipment class 1 (single-phase liquid-immersed transformers) at TSL 1. These efficiencies are 99.11 percent for design line 1, 98.95 percent for design line 2, and 99.49 percent for design line 3. These efficiencies correspond to EL 0.4 for design line 1, EL 0.5 for design line 2, and EL 1.1 for design line 3.

The TSLs that DOE used for the final rule are presented in section V.A of this preamble. DOE notes that, for the final rule, it has slightly modified the definition of TSL 2 for low-voltage dry-type distribution transformers from the NOPR definition. Where previously DL 6 had been at EL 3 in TSL 2, in today's rule DL 6 is held at the baseline because DOE did not find positive economic benefits to the consumer above that level. Small, single-phase transformers tend to be lightly-loaded and have a more difficult time than their larger, three-phase counterparts recovering increases in first cost. DOE believes this change provides increased customer benefits with TSL 2.

3. Impact of Standards on Transformer Refurbishment

A number of parties expressed concern that amended standards on transformers would induce use of rebuilt or refurbished distribution transformers rather than the more expensive new transformers. (HI, No.151 at pp. 9, 12; Cooper, No. 165 at p. 5; Prolec-GE, No. 177 at p. 14; ComEd, No. 184 at p. 13; Westar, No. 169 at p. 3) Several parties stated that the higher the initial cost increase due to energy efficiency standards, the higher the likelihood that utilities will use more recycled equipment. (EEI, No. 185 at p. 17; APPA, No. 191 at p. 12; Progress Energy, No. 192 at p. 9) BG&E stated that if new transformer requirements significantly increase costs, it may consider purchasing refurbished designs to address the size and weight problems of transformers meeting the standard. (BG&E, No. 182 at p. 9) Fort Collins Utilities commented that it would be purchasing fewer new transformers and re-winding more of its existing transformer units. (CFCU, No. 190 at p. 3)

Some parties specifically stated that setting standards for liquid-immersed distribution transformers greater than TSL 1 would increase the use of less-efficient, refurbished transformers, and this would reduce the energy savings from such standards. (NEMA, No. 170 at p. 3; USW, No. 188 at pp. 4, 18–19) AEC and NRECA stated that if DOE raises standards above the levels proposed in the NOPR, it is likely that costs will increase dramatically, increasing the likelihood that more existing transformers will be recycled via refurbishment, rewinding, or rebuilding. (AEC, No. 163 at p. 3; NRECA, No. 172 at p. 3)

Several parties stated that rebuilt or refurbished transformers would be less efficient than new transformers and, therefore, the energy saving goals of standards would be undermined. (HI, No. 151 at pp. 9, 12; Cooper, No. 165 at p. 5; Prolec-GE, No. 177 at p. 14) AEC and NRECA stated that, in some cases, the efficiency of transformers may actually increase as a result of refurbishment or rewinding, but the efficiency of the refurbished transformer will most likely not meet the proposed efficiency levels. (AEC, No. 163 at p. 3; NRECA, No. 172 at p. 3) HI requested that DOE seek authority over the refurbished/repair industry to minimize use of lower-efficiency transformers. (HI, No. 151 at p. 11)

DOE acknowledges that a significant increase in the cost of new transformers could encourage growth in the use of refurbished transformers by some utilities, and that refurbished transformers likely would be less efficient than new transformers meeting today's standards. Although DOE was not able to explicitly model the likely extent of refurbishing at each considered TSL, it did include in its shipments analysis a price elasticity parameter that captures the response of the market to higher costs in a general way (see chapter 9 of the final rule TSD). Furthermore, DOE believes that the costs of new transformers meeting today's standards, which are approximately 3.0 percent (design line 2) and 13.1 percent (design line 3) higher than today's typical single-phase liquid-immersed distribution transformers, and approximately 6.9 percent (design line 4) and 12.6 percent (design line 5) higher than today's typical three-phase liquid-immersed transformers, would not be so high as to induce a significant level of refurbishing instead of replacement.

Earthjustice asserted that ''the statute leaves room for DOE to regulate the efficiency of rebuilt transformers'' and that ''it is reasonable for DOE to determine that rewound transformers are 'new covered products' subject to energy conservation standards if the title of the rewound transformer is then transferred to an end-user.'' (Earthjustice No. 195 at p. 6) Other commenters reached opposite conclusions regarding whether DOE has the authority to regulate refurbished or rewound transformers. AEC agreed with statements made by DOE's Office of the General Counsel during negotiations that existing and recycled transformers are not ''covered'' equipment and would not have to meet the proposed energy efficiency standards for new products that are ''covered.'' (AEC No. 163 at p. 3)

DOE has analyzed this issue for many years. For instance, in its August 4, 2006, NOPR, DOE summarized its legal authority to regulate new, used and refurbished transformers and sought public comment on the issue. 71 FR 44356, 44366–67. In that notice, DOE noted that for the entire history of its appliance and commercial equipment energy conservation standards program, DOE has not sought to regulate used units that have been reconditioned or rebuilt, or that have undergone major repairs. DOE stated that given there is no legislative history to ascertain Congressional intent and the potential ambiguity of the statutory language, this conclusion was based on detailed analysis and interpretation of numerous statutory provisions in the EPCA, namely 42 U.S.C. 6302, 6316(a) and 6317(a)(1). Importantly, DOE analyzed the meaning of a ''newly covered product'' and whether a refurbished transformer could nonetheless fall under this definition. (42 USC sec. 6302) The most reasonable interpretation of the statutory definition is that Congress intended that this provision apply to newly manufactured products and equipment the title of which has not passed for the first time to a consumer of the product. This conclusion was reiterated in the October 12, 2007 final rule. (72 FR 58203) And this remains DOE's position today. The issue was raised during the negotiations, and again, DOE emphasized that refurbished transformers were not ''covered'' equipment as defined by EPCA. (DOE No. 95 at p. 95) Despite DOE's lack of legal authority, DOE has continued to evaluate the degree to which utilities may purchase a refurbished product rather than a new transformer, as discussed above.

4. Alternative Means of Saving Energy

Rockwood Electric commented that a more effective means of saving energy than requiring energy conservation in the distribution transformers themselves would be to require that power distribution occur at higher voltages and thereby reduce resistive losses. (Rockwood Electric, No. 167 at p. 1) CFCU advocated that DOE seek more cost-effective means of finding efficiency in electric distribution systems than by increasing efficiency standards for distribution transformers. (CFCU, No. 190 at p. 2) DOE has no plans to address distribution voltage ratings in the present rulemaking, and does not consider the possibility to fall within its scope of coverage.

5. Alternative Rulemaking Procedures

Prior to publication of the NOPR, DOE held a series of negotiating sessions to discuss standards for all three types of distribution transformer under the Negotiated Rulemaking Act. The negotiating parties succeeded in arriving at a consensus standard for medium-voltage dry-type transformers, which is adopted in today's rule. Such adoption was supported by a broad spectrum of parties as discussed previously (Advocates, 4/10/12 comment at p. 2) Several parties commented on the negotiated rulemaking process.

Despite praising the consensus agreement on the medium-voltage-dry-type units, the Advocates commented that overall the process ''produced virtually no benefits.'' (Advocates, No. 186 at p. 14) In contrast, NEMA commented that the process was extremely valuable and resulted in a better analysis. (NEMA, No. 170 at p. 2) Eaton remarked that the negotiation process improved the resulting proposal for LVDT distribution transformers and was a more efficient vehicle for considering stakeholder input. (Eaton, No. 157 at p. 2) Progress Energy recommended that the spirit of the negotiating committee be retained indefinitely through formation of a task force of stakeholders that could advise DOE in the future. (PE, No. 192 at p. 2)

DOE appreciates feedback on the negotiation process and will consider its use in appropriate future rulemakings. Currently, DOE has no plans to form a task force on distribution transformer standards.

6. Proposed Standards—Weighting of Benefits vs. Burdens

DOE received many comments that supported or criticized the Department's weighing of the benefits and burdens in its selection of the proposed levels, particularly for liquid-immersed and low-voltage dry type transformers. The first section below presents general comments on all of the transformer superclasses, and the following sections present comments specifically on each of the superclasses. The final section presents a response to the comments by DOE.

a. General Comments

Many stakeholders expressed their support for the standards proposed by DOE. (AK, No. 146 at p. 143; ATI, No. 146 at p. 7; ATI, No. 181 at p. 1–2; CDA, No. 153 at p. 1; ComEd, No. 184 at p. 1; Cooper, No. 165 at p. 1; DE, No. 179 at p. 1; JEC, No. 173 at p. 2; KAEC, No. 126 at p. 1–2; KAEC, No. 149 at p. 7; NEMA, No. 146 at p. 146; NRECA, No. 146 at p. 158; PECO, No. 196 at p. 1; UAW, No. 194 at p. 1; USW, No. 148 at p. 1; Adams Electrical Coop, No. 13) Others pointed out that these levels are well-balanced, allowing cold rolled grain-oriented steel (CRGO)/amorphous competition, energy savings, and benefits to consumers without unduly harming manufacturers. (ATI, No. 146 at p. 9; Cooper, No. 143 at p. 1; Cooper, No. 146 at p. 13–14; (FedPac, No. 132 at p. 1 and pp. 3–4; HVOLT, No. 144 at p. 1 and pp. 10–11; NEMA, No. 146 at p. 12–13; Prolec-GE, No. 146 at p. 14–15; Schneider, No. 180 at p. 1; USW, No. 148 at p. 1) Other parties agreed, noting that a higher standard would cause a transition to amorphous steel, and urged DOE not to move to higher standard levels, as the proposed standards are the highest justified levels. (USW, No. 148 at p. 2; Weststar, No. 169 at p. 1 and p. 4; Adams Electrical Coop, No. 163 at p. 1; APPA, No. 191 at p. 2; Steelmakers, No. 188 at p. 2; PECO, No. 196 at p. 1; NEMA, No. 170 at p. 2; MTEMC, No. 210 at p. 1; EEI, No. 185 at p. 2; BG&E, No. 182 at p. 2; BSE, No. 152 at p. 1) ATI agreed, noting that the NOPR efficiency levels are the proper levels to ensure M3 and amorphous metals are cost competitive with each other. (ATI No. 181 at p. 2) KAEC commented that increased standards could pose a threat to small manufacturers. (KAEC, No. 126 at p. 2) BSE commented that an increase in standards would increase the capital expense of the transformer, which will in turn have a negative impact on rates that consumers are charged for their electricity with very minimal gains in efficiency. (BSE, No. 152 at p. 1) NEMA noted that there are no utility problems at the current proposed levels. (NEMA, No. 170 at p. 13) Steelmakers commented that DOE's proposal for liquid-immersed transformers correctly states that the standards it is proposing will not lessen the utility or performance of distribution transformers, while noting that increasing standards would negatively impact utility. (Steelmakers, No. 188 at pp. 15–16) AEC and NRECA both noted that under any revised analysis, DOE should not consider increasing the proposed efficiency levels, as the evidence has shown that there would be many negative impacts on domestic steelmakers, domestic transformer manufacturers, electric utilities, and end-use customers. (AEC, No. 163 at p. 1; NRECA, No. 172 at pp. 2, 6) NRECA supported the proposed efficiency levels in the NOPR as they minimize the concerns associated with size and weight issues. (NRECA, No. 172 at p. 8) APPA members recommend that the proposed efficiency levels should be viewed as the maximum achievable levels. (APPA, No. 191 at p. 2)

Other parties believe that DOE should choose more stringent efficiency levels. ASAP, ACEEE, NRDC and NPCC stated that a more thorough consideration of the record and completion of critical missing or incomplete analyses will lead DOE to the conclusion that higher standards are justified for both low-voltage dry-type and medium-voltage liquid-immersed transformers. They stated that higher standards than those proposed would yield shorter paybacks for consumers and much larger environmental and energy system benefits. The Advocates noted that other major countries, including China and India, make use of amorphous core transformers to a greater degree than does the United States. (Advocates, No. 186 at pp. 2–3) Metglas requested that DOE revise the proposed regulation because it deprives consumers of billions of dollars in potential energy savings and millions of tons of harmful pollution reductions by favoring older, less efficient transformer designs over innovative U.S.-made energy-efficient technologies. (Metglas, No. 102 at p. 3)

EMS Consulting commented that DOE's rationale for setting lower standards to minimize impact on the distribution transformer industry will cost the country significant potential energy savings and recommended higher standards for both liquid-immersed and low-voltage dry-type transformers. Based on EMS' calculations, a standard set between EL 1.5 and EL 2 for liquid-immersed transformers would allow the nation to gain additional energy savings while increasing demand for grain-oriented steels and creating a new market for amorphous steel. The market for grain-oriented steels will also expand as a result of higher standards for low-voltage dry-type transformers, which may be able to achieve EL 3 with M4/M5 material and butt-lap cores or EL 4 with step-lap mitering, and the investment required by industry to meet EL 4 is well-justified considering benefits to end users. (EMS, No. 178 at p. 8)

Some stakeholders commented that the proposed standards were too high and were not economically justified. (WE, No. 168 at p. 1,3; Sioux Valley Energy, No. 159 at p. 1; Polk-Burnett Electric Cooperative, No. 175 at p. 1; PJE, No. 202 at p. 1; MEC, No. 161 at p. 1; East Miss. EPA, No. 166 at p. 1; Central Electric Power Coop, No. 176 at p. 1) Specifically, stakeholders noted that the proposed standards would cause hardships to electricity consumers. (KEC, No. 164 at p. 1; BEC, No. 204 at p. 1; BEC, No. 205 at p. 1; CHELCO, No. 203 at p. 1) East Central Energy agreed, noting that the proposed standards achieve little to no benefit and would cost extra for manufacturers. (East Central Energy, No. 160 at p. 1) BEC pointed out that the cost savings were overstated in the NOPR. (BEC, No. 205 at p. 1) Westar Energy commented that they were hesitant to support even an increase to EL1 for liquid-immersed units. (Westar, No. 169 at p. 1) CCED noted that the standards proposed in the NOPR were without merit and the existing 2010 standards should be maintained instead. (CCED, No. 174 at p. 3)

Some stakeholders expressed opinions about how steel availability should factor into the standards that DOE chooses. Progress Energy urged DOE not to set a standard that would result in the use of specific steels that have questionable supply availability, noting that M3 and M4 grades of core steel should be required for 85 percent or more of any required efficiency level. (PE, No. 192 at p. 7–8) Earthjustice felt that DOE failed to rationally analyze the potential impacts associated with steel production capacity constraints while deciding on standard levels. (Earthjustice, No. 195 at p. 1) The Advocates noted that in the long term, amorphous steel is likely to predominate in the transformer market due to higher efficiency. They commented that countries such as China and India are fostering a transition to highly efficient transformers and more amorphous steel is used in these countries than in the United States. (Advocates, No. 186 at pp. 13–14)

b. Standards on Liquid-Immersed Distribution Transformers

The Advocates felt that DOE emphasized the worst-case scenario for manufacturer impacts when rejecting TSL 2 and TSL 3 for liquid-immersed transformers. (Advocates, No. 186 at p. 12) They noted that at TSL 4 for liquid-immersed transformers, potential costs to manufacturers are still far less than potential benefits to consumers. (Advocates, No. 186 at p. 11) The Advocates stated that DOE estimates that TSL 4 could result in a potential loss of industry value of 12 percent under the ''maintenance of profits'' scenario, a potential impact well within the norm of DOE estimates for other standards rulemakings. (Advocates, No. 186 at p. 3) The Advocates stated that a standard in the range of TSL 3.5 to TSL 4 would promote robust competition between silicon steel and amorphous metal, maximizing benefits for consumers and producing much larger energy savings for the Nation. They stated that TSL 4 or 3.5 can be met even if amorphous metal supplies do not increase. They added that if DOE feels that more time would provide greater confidence that supply of amorphous steel could increase to help meet market needs triggered by a TSL 3.5 or TSL 4 standard, they would not object to moving the effective date of today's rule a year or two further into the future. (Advocates, No. 186 at pp. 9–11)

At the NOPR public meeting, ASAP commented that the standard levels proposed for liquid-immersed transformers are far below the point that would maximize consumer benefits because DOE put an inordinate amount of weight on manufacturer impacts to the detriment of consumer benefits. (ASAP, No. 146 at p. 27) They also commented that DOE placed significant weight on steel manufacturer impacts but did not conduct a more detailed analysis on those impacts, in particular one which includes employment at each TSL for steel manufacturers. (ASAP, No. 146 at p. 143) ASAP recommended that DOE select EL 2 for liquid-immersed units. (ASAP, No. 146 at p. 18)

Berman Economics stated that DOE's rationale for choosing TSL 1 for liquid-immersed transformers, that a higher standard would require an unacceptable increase in cost to industry, suggests that DOE prefers that consumers pay more money than to require additional investment on the part of manufacturers. (Berman Economics, No. 150 at p. 2–3) Berman Economics also argues that DOE's rejection of EL 2 for liquid-immersed transformers is an indication that DOE is focused on avoiding competition for silicon steel even at the cost of energy and consumer savings and environmental preservation. (Berman Economics, No. 150 at p. 4) EMS recommended a level between EL 1.5 and EL 2.0. (EMS, No. 178 at p. 7)

Several stakeholders felt that DOE relied on impacts on small manufacturers too heavily, and noted that small manufacturers can build up to TSL 3. (Earthjustice, No. 195 at p. 2; Advocates, No. 186 at p. 11; NEEP, No. 193 at p. 1; ASAP, No. 146 at pp. 26–27; CA IOUs, No. 189 at p. 3)

Some stakeholders stated that setting higher standards may result in reduced benefits to consumers. EEI stated that utilities are concerned that if standards are set so high that transformer manufacturers need to use steels with possible supply constraints, there may be negative impacts on the electrical grid, which would have a negative impact on consumers. (EEI, No. 185 at p. 13)

EEI stated that several members expressed concern that the more efficient transformers will be larger in size (height, width, and depth), which will have an impact for all retrofit situations, and they would have much larger weights, which would increase costs in terms of installation and pole structural integrity for retrofits of existing pole-mounted transformers. (EEI, No. 185 at p. 11) A number of electric utilities made similar comments. (BG&E, No. 182 at p. 6;

ComEd, No. 184 at p. 11; EMEPA, No. 166 at p. 1; PECO, No. 196 at p. 1; Pepco, No. 145 at p. 3; WE, No. 168 at p. 3; Westar, No. 169 at p. 2) Howard Industries also stated that the increased size and weight will sometimes be a constraint and result in increased costs. (HI, No. 151 at p. 7)

A number of parties expressed specific concerns about size and space constraints for network/vault transformers. (BG&E, No. 182 at p. 6; ComEd, No. 184 at p. 11; Pepco, No. 145 at pp. 2–3; PE, No. 192 at p. 8; Prolec-GE, No. 177 at p. 12) These concerns lead several parties to recommend a separate equipment class for network/vault transformers. (DOE addresses this issue in section IV.A.2.) EEI and several electric utilities stated that efficiency standards for network/vault transformers should be the same as the efficiency levels that have been in effect since January 1, 2010. (EEI, No. 185 at p. 3; Pepco, No. 145 at p. 2; PE, No. 192 at p. 8; Prolec-GE, No. 177 at p. 12)

Northern Wasco supported the DOE proposal for liquid-immersed units and believed anything beyond would not be cost-effective. (NWC, No. 147 at p. 1) UAW agreed, noting that any level above TSL 1 would not be economically justified. (UAW, No. 194 at p. 2) ATI stated that efficiency levels in excess of the NOPR proposal would create a non-competitive market for new medium-voltage liquid-type designs that would eliminate projected LCC savings. (ATI, No. 54 at p. 2) Steelmakers commented that promulgating energy conservation standards greater than TSL 1 for liquid-immersed transformers would transfer significant competitive power to the sole maker of amorphous metal. (Steelmakers, No. 188 at pp. 9–10)

After the supplementary analysis was presented, which included the new TSLs described in section IV.O.1, a handful of stakeholders recommended that DOE adopt one of the TSLs presented in the supplementary analysis. The Advocates recommended that DOE adopt TSL C, following the supplementary rulemaking process, to increase energy savings relative to the levels proposed in the NOPR and increase life cycle cost savings. (Advocates, No. 235 at p. 2) They added that if DOE wants to foster a more gradual market growth for amorphous metal, TSL D would achieve such an outcome by lowering the standard for pole type transformers, but would still approach the national savings of TSL C. (Advocates, No. 235 at p. 1) Berman Economics agreed that TSL C or D should be selected as they provide the best balance. (Berman Economics, No. 221 at p. 1) NEMA stated that TSL A was the only level presented in the supplementary rulemaking that met the three principles that they applied during the rulemaking process to select levels, but suggested that the level be moved to EL 0 for design line 2. (NEMA, No. 225 at p. 4) Prolec-GE expressed their support for TSL A as well, believing that these efficiency levels provide additional energy savings while preserving manufacturers' ability to use both silicon and amorphous steel to meet the demand of the market. In the absence of TSL A, they recommended TSL 2 as the maximum possible alternative, which they noted would result in higher cost and heavier and larger pole units. (Prolec-GE, No. 238 at p. 3)

c. Standards on Low-Voltage Dry-Type Distribution Transformers

The Advocates stated that for LVDT transformers, DOE rejected TSL 3 despite its own economic analysis showing greater net consumer savings, and mean paybacks of five to twelve years, well within a transformer's typical 30-year lifespan. (Advocates, No. 186 at p. 3) They stated that a more thorough investigation of impacts on domestic small manufacturers and a better balancing of public benefits and manufacturer impacts will lead DOE to adopt TSL 3, the maximum level which yields net present value benefits for consumers and can incontrovertibly be achieved using silicon steel cores. They said that if DOE rejects TSL 3, the agency should at least adopt TSL 2, which represents the NEMA Premium® level (30 percent reduction in losses) for all transformers. They added that DOE overestimated the savings from the proposed standards (i.e., TSL 1). (Advocates, No. 186 at pp. 3–4) However, they recommend that if TSL 3 is not adopted, TSL 2 should be chosen, as a number of manufacturers are already committed to manufacturing at NEMA Premium®. (Advocates, No. 186 at p. 7–8) ASAP commented that DOE should select EL 4 for DL7 and DL8. (ASAP, No. 146 at p. 19) EMS stated that low-voltage dry-type standards should be set at TSL 2 or TSL 3. (EMS, No. 178 at p. 7)

CA IOUs stated that TSL 3 is the highest achievable efficiency level at which low-voltage dry-type distribution transformers can be constructed using grain-oriented steel, and they recommend that DOE consider adopting standards at this level. They noted that while DOE expresses concern that small manufacturers are disproportionately impacted by standards for low-voltage dry-type transformers, DOE's analysis shows that there are actually very few small manufacturers in this market, and that those small manufacturers that do exist in the market primarily focus on design lines that are exempted from coverage. (CA IOUs, No. 189 at pp. 2–3)

Schneider Electric and FedPac both expressed support for the low-voltage dry type proposed standards in the NOPR. (FedPac, No. 132 at p. 2; Schneider, No. 180 at p. 1) FedPac noted that the proposed standards may be slightly high for 3-phase above 150 kVA and may put small manufacturers at risk due to potentially large capital investments necessary to remain in business at these levels. (FedPac, No. 132 at pp. 2–3)

Some stakeholders demonstrated support for NEMA Premium® levels for low-voltage dry-type transformers. Eaton noted that NEMA Premium® represents an opportunity to produce efficiency gains and encourage new technologies and recommended adopting NEMA Premium® for DL7 and DL8. (Eaton, No. 157 at p. 2) NEEP pointed out that industry parties suggested higher efficiency on the record during negotiations, including NEMA Premium®. (NEEP, No. 193 at p. 5)

NEMA recommended that DOE select ELs 0, 2 and 2 for DLs 6, 7 and 8, respectively. NEMA noted that NEMA Premium® was still in development. (NEMA, No. 170 at p. 5) NEMA expressed concern that high efficiency standards for LVDT transformers would hurt small U.S. manufacturers. (NEMA, No. 170 at p. 5)

d. Standards on Medium-Voltage Dry-Type Distribution Transformers

The Advocates expressed support for the proposed standards for medium-voltage dry-type (MVDT) transformers. (The Advocates, No. 186 at p. 2) FedPac noted that the DOE was correct in its NOPR decision to not increase standards for single-phase MVDTs. (FedPac, No. 132 at p. 2)

NEMA made specific recommendations for medium-voltage, dry type transformers. First, it recommended for DL13 that the efficiency level allow for 10 percent more loss that DL12, as these are high BIL transformers. Second, it noted that for single-phase transformers the single-phase efficiency should be less than the three-phase efficiency by a maximum of 30 percent higher losses and should not exceed 2010 standard. (NEMA, No. 170 at p. 4)

NEMA stated that for medium-voltage dry-type transformers used in high-rise buildings, it recommended different treatment because of size and weight limitations (elevator capacity) in existing installations. It stated that manufacturers are confident that the sizes and weights of the high-rise MVDT transformer in compliance with the current standards can continue to be used without significant problems, but going to any higher efficiency levels for high-rise MVDT transformers will adversely impact the continued installation and replacement of this type of transformer. (NEMA, No. 170 at p. 4) BG&E and ComEd also stated that designs that increase the size and weight of dry-type transformers could prohibit replacement of existing units used in high-rise buildings. (BG&E, No. 182 at p. 6; ComEd, No. 184 at p. 11)

e. Response to Comments on Standards Proposed in Notice of Proposed Rulemaking

DOE acknowledges the comments described above and has taken them into account in developing today's final rule. As stated previously, DOE seeks to set the highest energy conservation standards that are technologically feasible, economically justified, and that will result in significant energy savings. In section V.C, DOE explains why it has adopted the standards established by this final rule, and it addresses the issues raised in the preceding comments. DOE agrees with many of the concerns associated with higher efficiency transformers, and these considerations contributed to the selection of today's standards. In particular, DOE believes that the increase in medium-voltage dry-type distribution transformer size and weight for the efficiency levels in today's final rule, which were unanimously agreed to by the negotiation committee, will not adversely impact the continued installation and replacement of these transformers.

V. Analytical Results and Conclusions

A. Trial Standard Levels

Table V.1 through Table V.3 present the TSLs analyzed and the corresponding efficiency level for the representative unit in each transformer design line. The mapping of TSLs to corresponding efficiency levels for each design line is described in detail in chapter 10, section 10.2.2.3 of the final rule TSD. The baseline in the tables is equal to the current energy conservation standards.

For liquid-immersed distribution transformers, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents an increase in efficiency where a diversity of electrical steels are cost-competitive and economically feasible for all design lines; TSL 2 represents EL1 for all design lines; TSL 3 represents the maximum efficiency level achievable with M3 core steel; TSL 4 represents the maximum NPV with 7 percent discounting; TSL 5 represents EL 3 for all design lines; TSL 6 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 7 represents the maximum technologically feasible level (max tech).

For low-voltage dry-type distribution transformers, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents the maximum efficiency level achievable with M6 core steel; TSL 2 represents EL 3 for design line 7, EL 2 for design line 8 and no efficiency increase for design line 6; TSL 3 represents the maximum EL achievable using butt-lap miter core manufacturing for single-phase distribution transformers, and full miter core manufacturing for three-phase distribution transformers; TSL 4 represents the maximum NPV with 7 percent discounting; TSL 5 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 6 represents the maximum technologically feasible level (max tech).

For medium-voltage dry-type distribution transformers based on the subcommittee consensus detailed in section II.B.2, above, the efficiency levels in each TSL can be characterized as follows: TSL 1 represents EL1 for all design lines; TSL 2 represents an increase in efficiency where a diversity of electrical steels are cost-competitive and economically feasible for all design lines; TSL 3 represents the maximum NPV with 7 percent discounting; TSL 4 represents the maximum source energy savings with positive NPV with 7 percent discounting; and TSL 5 represents the maximum technologically feasible level (max tech).

TABLE V.1—EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR LIQUID-IMMERSED TRANSFORMERS BY DESIGN LINE

Design line	Baseline	TSL						
		1	2	3	4	5	6	7
	Percent							
1	99.08	99.11	99.16	99.16	99.22	99.25	99.31	99.50
2	98.91	98.95	99.00	99.00	99.07	99.11	99.18	99.41
3	99.42	99.49	99.48	99.51	99.57	99.54	99.61	99.73
4	99.08	99.16	99.16	99.16	99.22	99.25	99.31	99.60
5	99.42	99.48	99.48	99.51	99.57	99.54	99.61	99.69

TABLE V.2 EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR LOW-VOLTAGE DRY-TYPE TRANSFORMERS BY DESIGN LINE

Design line	Baseline	TSL					
		1	2	3	4	5	6
	Percent						
6	98.00	98.00	98.00	98.80	99.17	99.17	99.44
7	98.00	98.47	98.60	98.80	99.17	99.17	99.44
8	98.60	99.02	99.02	99.25	99.44	99.58	99.58

TABLE V.3—EFFICIENCY VALUES OF THE TRIAL STANDARD LEVELS FOR MEDIUM-VOLTAGE DRY-TYPE TRANSFORMERS BY DESIGN LINE

Design line	Baseline	TSL				
		1	2	3	4	5
	Percent					
9	98.82	98.93	98.93	99.04	99.04	99.55
10	99.22	99.29	99.37	99.37	99.37	99.63
11	98.67	98.81	98.81	99.13	99.13	99.50
12	99.12	99.21	99.30	99.46	99.46	99.63
13A	98.63	98.69	98.69	99.04	99.84	99.45
13B	99.15	99.19	99.28	99.28	99.28	99.52

B. Economic Justification and Energy Savings

1. Economic Impacts on Customers

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of standards on transformer customers, DOE conducted LCC and PBP analyses for each TSL. In general, higher-efficiency equipment would affect customers in two ways: (1) Annual operating expense would decrease, and (2) purchase price would increase. Section IV.F.2 of this preamble discusses the inputs DOE used for calculating the LCC and PBP. The LCC and PBP results are calculated from transformer cost and efficiency data that are modeled in the engineering analysis (section IV.C). During the negotiated rulemaking, DOE presented separate transformer cost data based on 2010 and 2011 material prices to the committee members. DOE conducted its LCC and PBP analysis utilizing both the 2010 and 2011 material price cost data. The average results of these two analyses are presented here.

For each design line, the key outputs of the LCC analysis are a mean LCC savings and a median PBP relative to the base case, as well as the fraction of customers for which the LCC will decrease (net benefit), increase (net cost), or exhibit no change (no impact) relative to the base-case product forecast. No impacts occur when the base-case equals or exceeds the efficiency at a given TSL. Table V.4 through Table V.17 show the key results for each transformer design line.

TABLE V.4—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 1 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4 **	5 **	6	7
Efficiency (%)	99.11	99.16	99.16	99.22	99.25	99.31	99.50
Transformers with Net LCC Cost (%) *	37.3	44.2	44.2	7.0	7.0	11.2	42.6
Transformers with Net LCC Benefit (%) *	62.5	55.6	55.6	92.9	92.9	88.8	57.4
Transformers with No Change in LCC (%) *	0.2	0.2	0.2	0.2	0.2	0.0	0.0
Mean LCC Savings ($)	83	153	153	696	696	618	365
Median PBP (Years)	17.7	24.7	24.7	10.8	10.8	13.7	24.6

* Rounding may cause some items to not total 100 percent.
** The results are the same for these TSLs because in both cases customers are expected to purchase the least cost transformer designs that meet the EL. The least cost transformer designs are the same for TSLs 4 and 5.

TABLE V.5—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 2 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	98.95	99.00	99.00	99.07	99.11	99.18	99.41
Transformers with Net LCC Cost (%) *	41.5	18.2	18.2	11.4	13.1	17.8	67.2
Transformers with Net LCC Benefit (%) *	55.2	81.8	81.8	88.6	86.9	82.2	32.8
Transformers with No Change in LCC (%) *	3.4	0.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	66	278	278	343	330	311	−579
Median PBP (Years)	5.9	9.9	9.9	11.1	13.0	15.5	31.6

* Rounding may cause some items to not total 100 percent.

TABLE V.6—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 3 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.49	99.48	99.51	99.57	99.54	99.61	99.73
Transformers with Net LCC Cost (%)*	14.5	13.9	12.0	4.0	5.3	4.0	29.9
Transformers with Net LCC Benefit (%)*	84.2	84.8	86.9	95.9	94.7	96.0	70.1
Transformers with No Change in LCC (%)*	1.3	1.3	1.2	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2709	2407	3526	5527	5037	6942	4491
Median PBP (Years)	8.5	8.3	5.8	6.5	6.4	7.2	19.1

* Rounding may cause some items to not total 100 percent.

TABLE V.7—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 4 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.16	99.16	99.16	99.19	99.22	99.25	99.50
Transformers with Net LCC Cost (%)*	6.6	6.6	6.6	7.6	2.5	2.5	5.9
Transformers with Net LCC Benefit (%)*	92.8	92.8	92.8	91.8	96.9	96.9	94.1
Transformers with No Change in LCC (%)*	0.6	0.6	0.6	0.6	0.6	0.6	0.0
Mean LCC Savings ($)	977	977	977	1212	3603	3603	4349
Median PBP (Years)	7.0	7.0	7.0	9.1	5.6	5.6	10.2

* Rounding may cause some items to not total 100 percent.

TABLE V.8—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 5 REPRESENTATIVE UNIT

	Trial standard level						
	1	2	3	4	5	6	7
Efficiency (%)	99.48	99.48	99.51	99.57	99.54	99.61	99.69
Transformers with Net LCC Cost (%)*	30.5	30.5	19.9	9.8	14.8	9.1	41.9
Transformers with Net LCC Benefit (%)*	69.1	69.1	80.0	90.2	85.2	91.0	58.1
Transformers with No Change in LCC (%)*	0.4	0.4	0.1	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	3668	3668	6852	10382	8616	12014	4619
Median PBP (Years)	6.5	6.5	6.5	9.1	8.5	11.4	22.5

*Rounding may cause some items to not total 100 percent.

TABLE V.9—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 6 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	98.00	98.00	98.93	99.17	99.17	99.44
Transformers with Net LCC Cost (%)*	0.0	0.0	16.5	37.8	37.8	96.6
Transformers with Net LCC Benefit (%)*	0.0	0.0	83.5	62.2	62.2	3.4
Transformers with No Change in LCC (%)*	100.0	100.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	0	0	325	148	148	-992
Median PBP (Years)	0.0	0.0	12.4	15.7	15.7	31.7

* Rounding may cause some items to not total 100 percent.

TABLE V.10—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 7 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	98.47	98.60	98.80	99.17	99.17	99.44
Transformers with Net Increase in LCC (%)*	1.5	1.3	1.7	3.3	3.3	45.6

TABLE V.10—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 7 REPRESENTATIVE UNIT—Continued

	Trial standard level					
	1	2	3	4	5	6
Transformers with Net LCC Savings (%) *	98.4	98.7	98.3	96.7	96.7	54.4
Transformers with No Impact on LCC (%) *	0.1	0.1	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	1526	1678	1838	2280	2280	212
Median PBP (Years)	3.9	3.6	4.1	6.3	6.3	16.8

*Rounding may cause some items to not total 100 percent.

TABLE V.11—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 8 REPRESENTATIVE UNIT

	Trial standard level					
	1	2	3	4	5	6
Efficiency (%)	99.02	99.02	99.25	99.44	99.58	99.58
Transformers with Net Increase in LCC (%) *	4.7	4.7	13.3	9.0	79.3	79.3
Transformers with Net LCC Savings (%) *	95.3	95.3	86.7	91.0	20.7	20.7
Transformers with No Impact on LCC (%) *	0.0	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2588	2588	2724	4261	−2938	−2938
Median PBP (Years)	7.7	7.7	11.3	10.1	22.5	22.5

* Rounding may cause some items to not total 100 percent.

TABLE V.12—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 9 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.93	98.93	99.04	99.04	99.55
Transformers with Net Increase in LCC (%) *	3.6	3.6	5.9	5.9	57.4
Transformers with Net LCC Savings (%) *	83.2	83.2	94.1	94.1	42.6
Transformers with No Impact on LCC (%) *	13.3	13.3	0.0	0.0	0.0
Mean LCC Savings ($)	787	787	1514	1514	−299
Median PBP (Years)	2.6	2.6	6.1	6.1	18.5

* Rounding may cause some items to not total 100 percent.

TABLE V.13—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 10 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.29	99.37	99.37	99.37	99.63
Transformers with Net Increase in LCC (%) *	0.7	17.9	17.9	17.9	88.8
Transformers with Net LCC Savings (%) *	98.8	82.1	82.1	82.1	11.2
Transformers with No Impact on LCC (%) *	0.5	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	4604	4455	4455	4455	−14727
Median PBP (Years)	1.1	8.6	8.6	8.6	27.5

* Rounding may cause some items to not total 100 percent.

TABLE V.14—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 11 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.81	98.81	99.13	99.13	99.50
Transformers with Net Increase in LCC (%) *	21.9	21.9	25.9	25.9	82.7
Transformers with Net LCC Savings (%) *	78.1	78.1	74.1	74.1	17.4
Transformers with No Impact on LCC (%) *	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	996	996	1849	1849	−4166
Median PBP (Years)	10.6	10.6	13.6	13.6	24.1

* Rounding may cause some items to not total 100 percent.

TABLE V.15—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 12 REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.21	99.30	99.46	99.46	99.63
Transformers with Net Increase in LCC (%)*	7.1	7.6	17.1	17.1	85.4
Transformers with Net LCC Savings (%)*	92.9	92.4	82.9	82.9	14.6
Transformers with No Impact on LCC (%)*	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	4537	6790	8594	8594	−14496
Median PBP (Years)	6.0	8.5	12.3	12.3	24.7

*Rounding may cause some items to not total 100 percent.

TABLE V.16—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 13A REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	98.69	98.69	98.84	99.04	99.45
Transformers with Net Increase in LCC (%)*	54.2	54.2	45.5	66.3	98.5
Transformers with Net LCC Savings (%)*	45.8	45.8	54.5	33.7	1.5
Transformers with No Impact on LCC (%)*	0.0	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	−27	−27	311	−1019	−12053
Median PBP (Years)	16.1	16.1	16.2	20	35.3

*Rounding may cause some items to not total 100 percent.

TABLE V.17—SUMMARY LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR DESIGN LINE 13B REPRESENTATIVE UNIT

	Trial standard level				
	1	2	3	4	5
Efficiency (%)	99.19	99.28	99.28	99.28	99.52
Transformers with Net Increase in LCC (%)*	30.5	27.3	27.3	27.3	70.4
Transformers with Net LCC Savings (%)*	69.3	72.7	72.7	72.7	29.6
Transformers with No Impact on LCC (%)*	0.2	0.0	0.0	0.0	0.0
Mean LCC Savings ($)	2494	4346	4346	4346	−6823
Median PBP (Years)	4.5	12.2	12.2	12.2	20.6

*Rounding may cause some items to not total 100 percent.

b. Customer Subgroup Analysis

In the customer subgroup analysis, DOE estimated the LCC impacts of the distribution transformer TSLs on purchasers of vault-installed transformers (primarily urban utilities). DOE included only the three-phase liquid-immersed design lines in this analysis, since those types account for the vast majority of vault-installed transformers. Table V.18 shows the mean LCC savings at each TSL for this customer subgroup.

Chapter 11 of the final rule TSD explains DOE's method for conducting the customer subgroup analysis and presents the detailed results of that analysis.

TABLE V.18—COMPARISON OF MEAN LIFE-CYCLE COST SAVINGS FOR LIQUID-IMMERSED TRANSFORMERS PURCHASED BY CONSUMER SUBGROUP

[2011$]

Design line	Trial standard level						
	1	2	3	4	5	6	7
Medium Vault Replacement Subgroup							
4	−1236	−1236	−1236	−3078	−759	−759	−377
5	2387	2387	−6183	−4421	−6156	−2905	4619
All Customers							
4	977	977	977	1212	3603	3603	4349
5	3668	3668	6852	10382	8616	12014	4619

c. Rebuttable Presumption Payback

As discussed in section IV.F.3.j, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. (42 U.S.C. 6295(o)(2)(B)(iii), 6316(a)) DOE calculated a rebuttable-presumption PBP for each TSL to determine whether DOE could presume that a standard at that level is economically justified. As required by EPCA, DOE based the calculations on the assumptions in the DOE test procedure for distribution transformers. (42 U.S.C. 6295(o)(2)(B)(iii), 6316(a)) As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of PBPs, for each TSL. Table V.19 and Table V.21 show the rebuttable-presumption PBPs for the considered TSLs. The rebuttable presumption is fulfilled in those cases where the PBP is three years or less. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the customer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any three-year PBP analysis). Section V.C addresses how DOE considered the range of impacts to select today's standard.

TABLE V.19—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Design line	Rated capacity *kVA*	Trial standard level						
		1	2	3	4	5	6	7
1	50	17.5	17.7	17.7	12.5	12.5	14.9	20.0
2	25	22.5	20.7	20.7	16.5	17.1	18.3	34.2
3	500	9.1	9.0	9.0	7.6	8.0	7.5	16.9
4	150	8.1	8.1	8.1	5.5	5.5	5.5	17.5
5	1500	13.1	13.1	8.4	8.5	8.7	10.0	19.9

TABLE V.20—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Design line	Rated capacity *kVA*	Trial standard level					
		1	2	3	4	5	6
6	25	0.0	0.0	12.5	14.5	14.5	25.7
7	75	3.8	3.5	4.0	6.1	6.1	14.1
8	300	6.5	6.5	10.0	9.3	19.4	19.4

TABLE V.21—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Design line	Rated capacity *kVA*	Trial standard level				
		1	2	3	4	5
9	300	1.8	1.8	4.2	4.2	14.1
10	1500	1.3	5.5	5.5	5.5	19.9
11	300	10.0	10.0	12.7	12.7	18.3
12	1500	5.9	7.3	11.5	11.5	19.7
13A	300	12.7	12.7	12.5	21.4	27.9
13B	2000	5.7	10.4	10.4	10.4	18.7

2. Economic Impact on Manufacturers

For the MIA in the February 2012 NOPR, DOE used changes in INPV to compare the direct financial impacts of different TSLs on manufacturers (77 FR 7282, February 10, 2012). DOE used the GRIM to compare the INPV of the base case (no new or amended energy conservation standards) to that of each TSL. The INPV is the sum of all net cash flows discounted by the industry's cost of capital (discount rate) to the base year. The difference in INPV between the base case and the standards case is an estimate of the economic impacts that implementing that standard level would have on the distribution transformer industry. For today's final rule, DOE continues to use the methodology presented in the NOPR at 77 FR 7282 (February 10, 2012).

a. Industry Cash-Flow Analysis Results

The tables below depict the financial impacts (represented by changes in INPV) of amended energy standards on manufacturers as well as the conversion costs that DOE estimates manufacturers would incur at each TSL. The effect of amended standards on INPV was analyzed separately for each type of distribution transformer manufacturer: liquid-immersed, medium-voltage dry-type, and low-voltage dry-type. To evaluate the range of cash flow impacts on the distribution transformer industry, DOE modeled two different scenarios using different assumptions for markups that correspond to the range of anticipated market responses to new and amended standards. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case (i.e., where new and amended energy conservation standards apply). Each of the two scenarios results in a unique set of cash flows and corresponding industry values at each TSL. The February 2012 NOPR discusses each of these scenarios in full, and they are also presented in chapter 12 of the TSD.

The MIA results for liquid-immersed distribution transformers are as follows:

TABLE V.22—MANUFACTURER IMPACT ANALYSIS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2011$ M	575.1	526.9	465.9	461.7	389.0	382.1	358.4	181.6
Change in INPV	2011$ M	....	(48.2)	(109.3)	(113.4)	(186.1)	(193.0)	(216.7)	(393.5)
	%	....	(8.4)	(19.0)	(19.7)	(32.4)	(33.6)	(37.7)	(68.4)
Capital Conversion Costs	2011$ M	....	25.3	57.8	60.6	92.8	96.2	101.5	124.5
Product Conversion Costs	2011$ M	....	24.2	65.2	65.7	96.1	96.1	96.1	96.1
Total Conversion Costs	2011$ M	....	49.4	123.0	126.3	188.9	192.3	197.7	220.6

*Note: Parentheses indicate negative values.

TABLE V.23—MANUFACTURER IMPACT ANALYSIS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP

	Units	Base case	Trial standard level						
			1	2	3	4	5	6	7
INPV	2011$ M	575.1	551.6	508.1	506.2	477.8	473.8	486.6	575.6
Change in INPV	2011$ M	....	(23.5)	(67.0)	(68.9)	(97.3)	(101.4)	(88.5)	0.5
	%	....	(4.1)	(11.7)	(12.0)	(16.9)	(17.6)	(15.4)	0.1
Capital Conversion Costs	2011$ M	....	25.3	57.8	60.6	92.8	96.2	101.5	124.5
Product Conversion Costs	2011$ M	....	24.2	65.2	65.7	96.1	96.1	96.1	96.1
Total Conversion Costs	2011$ M	....	49.4	123.0	126.3	188.9	192.3	197.7	220.6

At TSL 1, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$48.2 million to −$23.5 million, corresponding to a change in INPV of −8.4 percent to −4.1 percent. At this level, industry free cash flow is estimated to decrease by approximately 54.4 percent to $16.4 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

While TSL 1 can be met with traditional steels, including M3, in all design lines, amorphous core transformers will be incrementally more competitive on a first cost basis. According to manufacturer interviews, this would likely induce some manufacturers to gradually build amorphous steel transformer production capacity. Because the production process for amorphous cores is entirely separate from that of silicon steel cores, large investments in new capital, including new core cutting equipment and annealing ovens will be required. Additionally, a great deal of testing, prototyping, design and manufacturing engineering resources will be required because most manufacturers have relatively little experience, if any, with amorphous steel transformers. These capital and production conversion expenses lead to a reduction in cash flow in the years preceding the standard. In the lower-bound scenario, DOE assumes manufacturers can only maintain annual operating profit in the standards case. Therefore, these conversion investments, and manufacturers' higher working capital needs associated with more expensive transformers, drain cash flow and lead to a greater reduction in INPV, when compared to the upper-bound scenario. In the upper bound scenario, DOE assumes manufacturers will be able to fully markup and pass on the higher product costs, leading to higher operating income. This higher operating income essentially offsets the conversion costs and the increase in working capital requirements, leading to a negligible change in INPV at TSL1 in the upper-bound scenario.

At TSL 2, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$109.3 million to −$67.0 million, corresponding to a change in INPV of −19.0 percent to −11.7 percent. At this level, industry free cash flow is estimated to decrease by approximately 133.7 percent to −$12.1 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

TSL 2 requires the same efficiency levels as TSL 1, except for DL 2, which is increased from baseline to EL1. EL1, as opposed to the baseline efficiency, could induce manufacturers to build more amorphous capacity, when compared to TSL 1, because amorphous core transformers become incrementally more cost competitive. Because DL2 represents the largest share of core steel usage of all design lines, this has a significant impact on investments. There are more severe impacts on industry in the lower-bound profitability scenario when these greater one-time cash outlays are coupled with slight margin pressure. In the high-profitability scenario, manufacturers are able to maintain gross margins, mitigating the adverse cash flow impacts of the increased investment in working capital (associated with more expensive transformers).

At TSL 3, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$113.4 million to −$68.9 million, corresponding to a change in INPV of −19.7 percent to −12.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 137.6 percent to −$13.6 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

TSL 3 results are similar to TSL 2 results because the efficiency levels are the same except for DL3 and DL5, which each increase to EL 2 under TSL 3. The increase in stringency makes amorphous core transformers slightly more cost competitive in these DLs, according to the engineering analysis, which would likely increase amorphous core transformer capacity needs—all other things being equal—and drive more investment to meet the standards.

At TSL 4, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$186.1 million to −$97.3 million, corresponding to a change in INPV of −32.4 percent to −16.9 percent. At this level, industry free cash flow is estimated to decrease by approximately 206.6 percent to −$38.4 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

During interviews, manufacturers expressed differing views on whether the efficiency levels embodied in TSL 4 would shift the market away from silicon steels entirely. Because DL3 and DL5 must meet EL4 at this TSL, DOE expects the majority of the market would shift to amorphous core transformers at TSL 4 and above. Even assuming a sufficient supply of amorphous steel were available, TSL 4 and above would require a dramatic build up in amorphous core transformer production capacity. DOE believes this wholesale transition away from silicon steels could seriously disrupt the market, drive small businesses to either source their cores or exit the market, and lead even large businesses to consider moving production offshore or exiting the market altogether. The negative impacts are again driven by the large conversion costs associated with new amorphous steel production lines. If the higher first costs at TSL 4 drive more utilities to refurbish rather than replace failed transformers, a scenario many manufacturers predicted at the efficiency levels and prices embodied in TSL 4, reduced transformer sales could cause further declines in INPV.

At TSL 5, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$193.0 million to −$101.4 million, or a change in INPV of −33.6 percent to −17.6 percent. At this level, industry free cash flow is estimated to decrease by approximately 210.8 percent to −$39.9 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

TSL 5 would likely shift the entire market to amorphous core transformers, leading to even greater investment needs than TSL 4, and further driving the adverse impacts discussed above.

At TSL 6, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$216.7 million to −$88.5 million, corresponding to a change in INPV of −37.7 percent to −15.4 percent. At this level, industry free cash flow is estimated to decrease by approximately 217.5 percent to −$42.3 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

The impacts at TSL 6 are similar to those DOE expects at TSL 5, except that slightly more amorphous core production capacity will be needed because TSL 6-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 6 compared to TSL 5.

At TSL 7, DOE estimates impacts on INPV for liquid-immersed distribution transformer manufacturers to range from −$393.5 million to $0.5 million, corresponding to a change in INPV of −68.4 percent to 0.1 percent. At this level, industry free cash flow is estimated to decrease by approximately 246.2 percent to −$52.7 million, compared to the base-case value of $36.0 million in the year before the compliance date (2015).

The impacts at TSL 7 are similar to those DOE expects at TSL 6, except that slightly more amorphous core production capacity will be needed because TSL 7-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 7 compared to TSL 6, incrementally reducing industry value.

The MIA results for low-voltage dry-type distribution transformers are as follows:

TABLE V.24—MANUFACTURER IMPACT ANALYSIS LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	2011 $M	237.6	229.6	226.5	219.0	198.7	190.8	159.0
Change in INPV	2011 $M	....	(8.0)	(11.1)	(18.6)	(38.9)	(46.8)	(78.6)
	%	....	(3.4)	(4.7)	(7.8)	(16.4)	(19.7)	(33.1)
Capital Conversion Costs	2011 $M	....	4.5	5.3	12.0	28.5	30.7	45.6
Product Conversion Costs	2011 $M	....	2.9	3.6	5.0	8.0	8.0	8.0
Total Conversion Costs	2011 $M	....	7.4	9.0	17.0	36.5	38.7	53.6

* Note: Parentheses indicate negative values.

TABLE V.25—MANUFACTURER IMPACT ANALYSIS LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	Base case	Trial standard level					
			1	2	3	4	5	6
INPV	2011 $M	237.6	252.4	249.4	265.7	279.9	298.6	356.6
Change in INPV	2011 $M	....	14.8	11.8	28.1	42.3	61.0	118.9
	%	....	6.2	5.0	11.8	17.8	25.7	50.1
Capital Conversion Costs	2011 $M	....	4.5	5.3	12.0	28.5	30.7	45.6
Product Conversion Costs	2011 $M	....	2.9	3.6	5.0	8.0	8.0	8.0
Total Conversion Costs	2011 $M	....	7.4	9.0	17.0	36.5	38.7	53.6

* Note: Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$8.0 million to $14.8 million, corresponding to a change in INPV of −3.4 percent to 6.2 percent. At this level, industry free cash flow is estimated to decrease by approximately 5.0 percent to $14.5 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

TSL 1 provides many design paths for manufacturers to comply. DOE's engineering analysis indicates manufacturers can continue to use the low-capital butt-lap core designs, meaning investment in mitering or wound core capability is not necessary. Manufacturers can use higher-quality grain oriented steels in butt-lap designs to meet TSL1, source some or all cores, or invest in modified mitering capability (if they do not already have it).

At TSL 2, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$11.1 million to $11.8 million, corresponding to a change in INPV of −4.7 percent to 5.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 9.1 percent to $13.8 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

TSL 2 differs from TSL1 in that DL7 must meet EL3, up from EL2. Comments received from the NOPR and consultations with technical experts suggest that butt-lap technology can still be used to achieve EL 3 for DL 7. However, DOE expects the high volume manufacturers which supply most of the market to employ mitered cores at this efficiency level. Therefore, the increase in conversion costs for DL 7, which represents more than three-quarters of the market by core weight in this superclass, is primarily driven by the need to purchase additional core cutting equipment to accommodate the production of larger, mitered cores. Furthermore, manufacturers also indicated that there would be a reduced burden at TSL 2 relative to TSL 1 because they would be able to standardize the use of NEMA Premium® (with the exception of DL 6).

At TSL 3, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$18.6 to $28.1 million, corresponding to a change in INPV of −7.8 percent to 11.8 percent. At this level, industry free cash flow is estimated to decrease by approximately 31.9 percent to $10.4 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

TSL3 represents EL4 for DL6, DL7, and DL8. Although manufacturers may be able to meet EL4 using M4 steel, comments and interviews suggest uncertainty about the ability of M4 to meet EL 4 for all design lines. Manufacturers may be forced to use higher-grade and thinner steels like M3, H1, and H0. However, these thinner steels, in combination with larger cores, will dramatically slow production throughput and therefore require the industry to expand capacity to maintain current shipments. This is the reason for the increase in conversion costs. In the lower-bound profitability scenario, when DOE assumes the industry cannot fully pass on incremental costs, these investments and the higher working capital needs drain cash flow and lead to the negative impacts shown in the preservation of operating profit scenario. In the high-profitability scenario, impacts are slightly positive because DOE assumes manufacturers are able to fully recoup their conversion expenditures through higher operating cash flow.

At TSL 4, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$38.9 million to $42.3 million, corresponding to a change in INPV of −16.4 percent to 17.8 percent. At this level, industry free cash flow is estimated to decrease by approximately 87.2 percent to $1.9 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

TSL 4 and higher would create significant challenges for the industry and likely disrupt the marketplace. DOE's conversion costs at TSL 4 assume the industry will entirely convert to amorphous wound core technology to meet the efficiency standards. Few manufacturers of distribution transformers in this superclass have any experience with amorphous steel or wound core technology and would face a steep learning curve. This is reflected in the large conversion costs and adverse impacts on INPV in the Preservation of Operating Profit scenario. Most manufacturers DOE interviewed expected many low-volume manufacturers to exit the DOE-covered market altogether if amorphous steel was required to meet the standard. As such, DOE believes TSL 4 could lead to greater consolidation than the industry would experience at lower TSLs.

At TSL 5, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$46.8 million to $61.0 million, corresponding to a change in INPV of −19.7 percent to 25.7 percent. At this level, industry free cash flow is estimated to decrease by approximately 93.9 percent to $0.9 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

The impacts at TSL 5 are similar to those DOE expects at TSL 4, except that slightly more amorphous core production capacity will be needed because TSL 5-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 5 compared to TSL 4.

At TSL 6, DOE estimates impacts on INPV for low-voltage dry-type distribution transformer manufacturers to range from −$78.6 million to $118.9 million, corresponding to a change in INPV of −33.1 percent to 50.1 percent. At this level, industry free cash flow is estimated to decrease by approximately 138 percent to −$5.8 million, compared to the base-case value of $15.2 million in the year before the compliance date (2015).

The impacts at TSL 6 are similar to those DOE expects at TSL 5, except that slightly more amorphous core production capacity will be needed because TSL 6-compliant transformers will have somewhat heavier cores and thus require more amorphous steel. This leads to slightly greater capital expenditures at TSL 6 compared to TSL 5.

The MIA results for medium-voltage dry-type distribution transformers are as follows:

TABLE V.26—MANUFACTURER IMPACT ANALYSIS MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2011 $M	68.7	67.3	65.7	57.9	58.0	34.5
Change in INPV	2011 $M	....	(1.4)	(2.9)	(10.7)	(10.7)	(34.1)
	%	....	(2.0)	(4.2)	(15.6)	(15.5)	(49.7)
Capital Conversion Costs	2011 $M	....	0.2	0.5	3.9	3.9	13.9
Product Conversion Costs	2011 $M	....	2.0	2.0	3.7	3.7	8.2
Total Conversion Costs	2011 $M	....	2.2	2.6	7.7	7.7	22.1

* Note: Parentheses indicate negative values.

TABLE V.27—MANUFACTURER IMPACT ANALYSIS MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2011 $M	68.7	69.3	71.7	74.4	74.3	81.5
Change in INPV	2011 $M	....	0.7	3.0	5.7	5.6	12.9
	%	....	1.0	4.4	8.3	8.2	18.7
Capital Conversion Costs	2011 $M	....	0.2	0.5	3.9	3.9	13.9
Product Conversion Costs	2011 $M	....	2.0	2.0	3.7	3.7	8.2
Total Conversion Costs	2011 $M	....	2.2	2.6	7.7	7.7	22.1

* Note: Parentheses indicate negative values.

At TSL 1, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$1.4 million to $0.7 million, corresponding to a change in INPV of −2.0 percent to 1.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 2.3 percent to $4.3 million, compared to the base-case value of $4.4 million in the year before the compliance date (2015).

TSL 1 represents EL1 for all MVDT design lines. For DL12, the largest design line by core steel usage, manufacturers have a variety of steels available to them, including M4, the most common steel in the superclass. Additionally, the vast majority of the market already uses step-lap mitering technology. Therefore, DOE anticipates only moderate conversion costs for the industry, mainly associated with slower throughput due to larger cores. Some manufacturers may need to slightly expand capacity to maintain throughput and/or modify equipment to manufacturer with greater precision and tighter tolerances. In general, however, conversion expenditures should be relatively minor compared to INPV. For this reason, TSL 1 yields relatively minor adverse changes to INPV in the standards case.

At TSL 2 (the consensus recommendation from the negotiating committee), DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$2.9 million to $3.0 million, corresponding to a change in INPV of −4.2 percent to 4.4 percent. At this level, industry free cash flow is estimated to decrease by approximately 6.0 percent to $4.2 million, compared to the base-case value of $4.4 million in the year before the compliance date (2015).

Compared to TSL 1, TSL 2 requires EL2, rather than EL1, in DLs 10, 12, and 13B. Because M4 (as well as the commonly used H1) can still be employed to meet these levels, DOE expects similar results at TSL 2 as at TSL 1. Slightly greater conversion costs will be required as the compliant transformers will have heavier cores, all other things being equal, meaning additional capacity may be necessary depending on each manufacturer's current capacity utilization rate. As with TSL 1, TSL 2 will not require significant changes to most manufacturers production processes because the thickness of the steels will not change significantly, if at all.

At TSL 3, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$10.7 million to $5.7 million, corresponding to a change in INPV of −15.6 percent to 8.3 percent. At this level, industry free cash flow is estimated to decrease by approximately 53.4 to $2.1 million, compared to the base-case value of $4.4 million in the year before the compliance date (2015).

At TSL 4, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$10.7 million to $5.6 million, corresponding to a change in INPV of −15.5 percent to 8.2 percent. At this level, industry free cash flow is estimated to decrease by approximately −53.4 percent to $2.1 million, compared to the base-case value of $4.4 million in the year before the compliance date (2015).

TSL 3 and TSL 4 require EL2 for DL9 and DL10, but EL4 for DL11 through DL13B, which hold the majority of the volume. Several manufacturers were concerned TSL 3 would require some of the high volume design lines to use H1 or H0, or transition entirely to amorphous wound cores (with which the industry has experience). Without a cost effective M-grade steel option, the industry could face severe disruption. Even assuming a sufficient supply of Hi-B steel, which is generally used and priced for the power transformer market, relatively large expenditures would be required in R&D and engineering as most manufacturers would have to move production to steel with which they have little experience. DOE estimates total conversion costs would more than double at TSL 3, relative to TSL 2. If, based on the movement of steel prices, EL4 can be met cost competitively only through the use of amorphous steel or an exotic design with little or no current place in scale manufacturing, manufacturers would face significant challenges that DOE believes would lead to consolidation and likely cause many low-volume manufacturers to exit the product line.

At TSL 5, DOE estimates impacts on INPV for medium-voltage dry-type distribution transformer manufacturers to range from −$34.1 million to $12.9 million, corresponding to a change in INPV of −49.7 percent to 18.7 percent. At this level, industry free cash flow is estimated to decrease by approximately 189.1 percent to −$3.9 million, compared to the base-case value of $4.4 million in the year before the compliance date (2015).

TSL 5 represents max-tech and yields results similar to but more severe than TSL 4 results. The engineering analysis shows that the entire market must convert to amorphous wound cores at TSL 5. Because the industry has no experience with wound core technology, and little, if any, experience with amorphous steel, this transition would represent a tremendous challenge for industry. Interviews suggest most manufacturers would exit the market rather altogether or source their cores rather than make the investments in plant, equipment, and the R&D required to meet such levels.

b. Impacts on Employment

Liquid-Immersed. Based on interviews with manufacturers and other industry research, DOE estimates that there are roughly 5,000 employees associated with DOE-covered liquid-immersed distribution transformer production and some three-quarters of these workers are located domestically. DOE does not expect large changes in domestic employment to occur due to today's standard. Manufacturers generally agreed that amorphous core steel production is more labor-intensive and would require greater labor expenditures than tradition steel core production. So long as domestic plants are not relocated outside the country, DOE expects moderate increases in domestic employment at TSL1 and TSL2. There could be a small drop in employment at small, domestic manufacturing firms if small manufacturers began sourcing cores. This employment would presumably transfer to the core makers, some of whom are domestic and some of whom are foreign. There is a risk that higher energy conservation standards that largely require the use of amorphous steel could cause even large manufacturers who are currently producing transformers in the U.S. to evaluate offshore options. Faced with the prospect of wholesale changes to their production process, large investments and stranded assets, some manufacturers expect to strongly consider shifting production offshore at TSL 3 due to the increased labor expenses associated with the production processes required to make amorphous steel cores. In summary, at TSLs 1 and 2, DOE does not expect significant impacts on employment, but at TSL 3 or greater, which would require more investment, the impact is very uncertain.

Low-Voltage Dry-Type. Based on interviews with manufacturers, DOE estimates that there are approximately 2,200 employees associated with DOE-covered LVDT production. Approximately 75 percent of these employees are located outside of the U.S. Typically, high volume units are made in Mexico, taking advantage of lower labor rates, while custom designs are made closer to the manufacturer's customer base or R&D centers. DOE does not expect large changes in domestic employment to occur due to today's standard. Most production already occurs outside the U.S. and, by and large, manufacturers agreed that most design changes necessary to meet higher energy conservation standards would increase labor expenditures, not decrease them. If, however, small manufacturers began sourcing cores instead of manufacturing them in-house, there could be a small drop in employment at these firms. This employment would presumably transfer to the core makers, some of whom are domestic and some of whom are foreign. In summary, DOE does not expect significant changes to domestic LVDT industry employment levels as a result of today's standards. Higher TSLs may lead to small declines in domestic employment as more firms will be challenged with what amounts to clean-sheet redesigns. Facing the prospect of green field investments, these manufacturers may elect to make those investments in lower-labor cost countries.[67]

Medium-Voltage Dry-Type. Based on interviews with manufacturers, DOE estimates that there are approximately 1,850 employees associated with DOE-covered MVDT production. Approximately 75 percent of these employees are located domestically. With the exception of TSLs that require amorphous cores, manufacturers agreed that most design changes necessary to meet higher standards would increase labor expenditures, not decrease them, but current production equipment would not be stranded, mitigating the incentive to move production offshore. Corroborating this, the largest manufacturer and domestic employer in this market has indicated that the standard in this final rule, will not cause their company to reconsider production location. As such, DOE does not expect significant changes to domestic MVDT industry employment levels as a result of the standard in today's final rule. For TSLs that would require amorphous cores, DOE does anticipate significant changes to domestic MVDT industry employment levels.

c. Impacts on Manufacturing Capacity

Based on manufacturer interviews, DOE believes that there is significant excess capacity in the distribution transformer market. Shipments in the industry are well down from their peak in 2007, according to manufacturers. Therefore, DOE does not believe there would be any production capacity constraints at TSLs that do not require dramatic transitions to amorphous cores. For those TSLs that require amorphous cores in significant volumes, DOE believes there is potential for capacity constraints in the near term due to limitations on core steel availability. However, for the levels in today's rule, DOE does not foresee any capacity constraints.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Therefore, using average cost assumptions to develop an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups. DOE considered small manufacturers as a subgroup in the MIA. For a discussion of the impacts on the small manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B and chapter 12 of the final rule TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or 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

[67] A green field investment is a form of foreign direct investment where a parent company starts a new venture in a foreign country by constructing new operational facilities from the ground up.

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 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. During previous stages of this rulemaking, DOE identified a number of requirements in addition to amended energy conservation standards for distribution transformers. The Department did not receive comments regarding cumulative regulatory burden issues for the NOPR. DOE addresses the full details of the cumulative regulatory burden analysis in chapter 12 of the final rule TSD.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for transformers purchased in the 30-year period that begins in the year of compliance with amended standards (2016–2045). The savings are measured over the entire lifetime of products purchased in the 30-year period, which in the case of transformers extends through 2105. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. Table V.28 presents the estimated energy savings for each considered TSL. The approach used is further described in section IV.G.[68]

TABLE V.28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

	Trial standard level						
	1	2	3	4	5	6	7
	quads						
Liquid-immersed	0.92	1.56	1.76	3.31	3.30	4.09	7.01
Low-voltage dry-type	2.28	2.43	3.05	4.39	4.48	4.94	....
Medium-voltage dry-type	0.15	0.29	0.53	0.53	0.84	....	....

For this rulemaking, DOE undertook a sensitivity analysis using nine rather than 30 years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of the energy conservation standard established in this final rule and potential revision of and compliance with a new standard for distribution transformers.[69] This timeframe may not be statistically relevant with regard to the product lifetime, product manufacturing cycles or other factors specific to distribution transformers. Thus, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology. The NES results based on a nine-year analytical period are presented in Table V.29. The impacts are counted over the lifetime of products purchased in 2016–2024.

TABLE V.29—CUMULATIVE NATIONAL ENERGY SAVINGS FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2024

	Trial standard level						
	1	2	3	4	5	6	7
	quads						
Liquid-immersed	0.25	0.42	0.47	0.90	0.90	1.12	1.93
Low-voltage dry-type	0.63	0.67	0.85	1.22	1.24	1.38	....
Medium-voltage dry-type	0.04	0.08	0.15	0.15	0.23	....	....

b. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for customers that would result from the TSLs considered for distribution transformers. In accordance with OMB's guidelines on regulatory analysis,[70] DOE calculated the 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 on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. This discount rate approximates the opportunity cost of capital in the private sector (OMB analysis has found the average rate of return on capital to be near this rate). The three-percent rate reflects the potential effects of standards on private consumption (e.g.,through higher prices for products and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to

[68] Chapter 10 of the TSD presents tables that show the magnitude of the energy savings discounted at rates of 3 percent and 7 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.

[69] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, 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 previous standards. 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 may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[70] OMB Circular A–4, section E (Sept. 17, 2003). Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4*.

their present value. It can be approximated by the real rate of return on long-term government debt (i.e., yield on United States Treasury notes), which has averaged about 3 percent for the past 30 years.

Table V.30 shows the customer NPV results for each TSL considered. In each case, the impacts cover the lifetime of equipment purchased in 2016–2045.

TABLE V.30—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR DISTRIBUTION TRANSFORMERS TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2045

	Discount rate %	Trial standard level						
		1	2	3	4	5	6	7
		billion 2011$						
Liquid-immersed	3	3.12	4.82	5.62	10.78	10.19	10.27	−8.50
	7	0.58	0.69	0.91	1.92	1.60	0.74	−12.97
Low-voltage dry-type	3	8.38	9.04	10.38	13.65	11.80	5.17	
	7	2.45	2.67	2.82	3.34	2.22	−1.92	
Medium-voltage dry-type	3	0.49	0.79	1.12	1.12	−0.20		
	7	0.13	0.17	0.12	0.12	−0.89		

The results shown in the table reflect the default equipment price trend, which uses constant prices. DOE conducted an NPV sensitivity analysis using alternative price trends. DOE developed one forecast in which prices decline after 2010, and one in which prices rise. The NPV results from the associated sensitivity cases are described in appendix 10–C of the final rule TSD.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.31. The impacts are counted over the lifetime of equipment purchased in 2016–2024. As mentioned previously, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.31—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR DISTRIBUTION TRANSFORMERS TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2016–2024

	Discount rate %	Trial standard level						
		1	2	3	4	5	6	7
		billion 2011$						
Liquid-Immersed	3	1.09	1.67	1.95	3.77	3.55	3.55	−3.49
	7	0.26	0.31	0.41	0.88	0.73	0.29	−6.56
Low-voltage dry-type	3	3.02	3.26	3.73	4.88	4.19	1.70	
	7	1.19	1.30	1.37	1.60	1.04	−1.04	
Medium-voltage dry-type	3	0.18	0.28	0.39	0.39	−0.11		
	7	0.07	0.08	0.05	0.05	−0.46		

c. Indirect Impacts on Employment

DOE expects energy conservation standards for distribution transformers to reduce energy costs for equipment owners, and the resulting net savings to be redirected to other forms of economic activity. Those 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 time frames (2016–2020), 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 final rule TSD presents detailed results.

4. Impact on Utility or Performance of Equipment

DOE believes that the standards in today's rule will not lessen the utility or performance of distribution transformers.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new and 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 the Secretary of Energy, 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))

To assist the Attorney General in making such a determination, DOE has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. DOE considered DOJ's comments on the proposed rule in preparing the final rule.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts or costs of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 14 in the final rule TSD presents the estimated reduction in generating capacity in 2045 for the TSLs that DOE considered in this rulemaking.

Energy savings from standards for distribution transformers could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.32 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions projected to result from the TSLs considered in this rulemaking. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 15 of the final rule TSD.

TABLE V.32—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

	Trial standard level						
	1	2	3	4	5	6	7
Liquid-Immersed							
CO_2 (million metric tons)	82.2	143.1	156.5	274.6	273.4	321.8	501.8
NO_X (thousand tons)	69.3	120.6	131.8	231.1	230.1	270.8	421.9
SO_2 (thousand tons)	52.0	90.0	98.4	173.0	172.4	203.2	318.0
Hg (*tons*)	0.2	0.3	0.3	0.6	0.6	0.7	1.1
Low-Voltage Dry-Type							
CO_2 (million metric tons)	151.3	161.6	203.0	292.8	297.6	319.3	
NO_X (thousand tons)	127.6	136.4	171.3	247.0	251.0	269.3	
SO_2 (thousand tons)	110.1	117.6	147.8	213.2	216.7	232.4	
Hg (*tons*)	0.4	0.4	0.5	0.8	0.8	0.8	
Medium-Voltage Dry-Type							
CO_2 (million metric tons)	11.2	20.9	40.7	40.7	61.3		
NO_X (thousand tons)	9.34	17.7	34.2	34.2	51.5		
SO_2 (thousand tons)	7.06	13.29	25.65	25.65	38.69		
Hg (*tons*)	0.02	0.04	0.10	0.10	0.14		

As part of the analysis for this rule, DOE 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. As discussed in section IV.M, DOE used values for the SCC developed by an interagency process. The four sets of SCC values resulting from that process (expressed in 2011$) are represented by $4.9/metric ton (the average value from a distribution that uses a 5-percent discount rate), $22.3/metric ton (the average value from a distribution that uses a 3-percent discount rate), $36.5/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $67.6/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). These values correspond to the value of emission reductions in 2011; the values for later years are higher due to increasing damages as the projected magnitude of climate change increases.

Table V.33 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 16 of the final rule TSD.

TABLE V.33—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

TSL	5% discount rate, average *	3% discount rate, average *	2.5% discount rate, average *	3% discount rate, 95th percentile *
Million 2011$				
Liquid-Immersed				
1	259	1,390	2,377	4,230
2	454	2,428	4,151	7,390
3	494	2,649	4,530	8,060
4	855	4,609	7,891	14,024
5	851	4,588	7,855	13,960
6	991	5,366	9,195	16,325
7	1,515	8,266	14,190	25,144

TABLE V.33—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS—Continued

TSL	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
Low-Voltage Dry-Type				
1	450	2,470	4,245	7,512
2	480	2,637	4,532	8,020
3	603	3,313	5,694	10,075
4	870	4,779	8,214	14,535
5	884	4,857	8,348	14,771
6	949	5,211	8,956	15,847
Medium-Voltage Dry-Type				
1	35	188	321	571
2	65	350	599	1,065
3	126	680	1,164	2,067
4	126	680	1,164	2,067
5	190	1,024	1,755	3,117

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas (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 on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary 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 distribution transformers. The low and high dollar-per-ton values that DOE used are discussed in section IV.M. Table V.34 presents the cumulative present values for each TSL calculated using seven-percent and three-percent discount rates.

TABLE V.34—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER DISTRIBUTION TRANSFORMER TRIAL STANDARD LEVELS

TSL	3% discount rate	7% discount rate
Million 2011$		
Liquid-Immersed		
1	13 to 138	6 to 57
2	24 to 242	10 to 100
3	26 to 263	11 to 109
4	44 to 454	18 to 185
5	44 to 452	18 to 184
6	51 to 525	21 to 211
7	78 to 799	31 to 314
Low-Voltage Dry-Type		
1	23 to 238	9 to 92
2	25 to 254	10 to 99
3	31 to 319	12 to 124
4	45 to 460	17 to 179
5	45 to 468	18 to 182
6	49 to 502	19 to 195
Medium-Voltage Dry-Type		
1	2 to 18	1 to 7
2	3 to 34	1 to 14
3	6 to 67	3 to 27
4	6 to 67	3 to 27
5	10 to 100	4 to 41

7. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the customer savings calculated for each TSL considered in this rulemaking. Table V.35 through Table V.37 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 customer savings calculated for each TSL considered in this rulemaking, at both a seven-percent and three-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.35—LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Customer NPV at 3% Discount Rate added with:			
	SCC Value of $4.9/t CO_2 * and Low Value for NO_X **	SCC Value of $22.3/t CO_2 * and Medium Value for NO_X **	SCC Value of $36.5/t CO_2 * and Medium Value for NO_X **	SCC Value of $67.6/t CO_2 * and High Value for NO_X **
	Billion 2011$			
1	3.4	4.6	5.6	7.5
2	5.3	7.4	9.1	12.5
3	6.1	8.4	10.3	13.9
4	11.7	15.6	18.9	25.3
5	11.1	15.0	18.3	24.6
6	11.3	15.9	19.8	27.1
7	−6.9	0.2	6.1	17.4
TSL	Customer NPV at 7% Discount Rate added with:			
	SCC Value of $4.9/t CO_2 * and Low Value for NO_X **	SCC Value of $22.3/t CO_2 * and Medium Value for NO_X **	SCC Value of $36.5/t CO_2 * and Medium Value for NO_X **	SCC Value of $67.6/t CO_2 * and High Value for NO_X **
	Billion 2011$			
1	0.8	2.0	3.0	4.9
2	1.2	3.2	4.9	8.2
3	1.4	3.6	5.5	9.1
4	2.8	6.6	9.9	16.1
5	2.5	6.3	9.6	15.7
6	1.8	6.2	10.1	17.3
7	−11.4	−4.5	1.4	12.5

* These label values represent the global SCC in 2011, in 2011$. The 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.36—LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Customer NPV at 3% Discount Rate added with:			
	SCC Value of $4.9/t CO_2 * and Low Value for NO_X **	SCC Value of $22.3/t CO_2 * and Medium Value for NO_X **	SCC Value of $36.5/t CO_2 * and Medium Value for NO_X **	SCC Value of $67.6/t CO_2 * and High Value for NO_X **
	Billion 2011$			
1	8.8	11.0	12.8	16.1
2	9.5	11.8	13.7	17.3
3	11.0	13.9	16.3	20.8
4	14.6	18.7	22.1	28.6
5	12.7	16.9	20.4	27.0
6	6.2	10.7	14.4	21.5
TSL	Customer NPV at 7% Discount Rate added with:			
	SCC Value of $4.9/t CO_2 * and Low Value for NO_X **	SCC Value of $22.3/t CO_2 * and Medium Value for NO_X **	SCC Value of $36.5/t CO_2 * and Medium Value for NO_X **	SCC Value of $67.6/t CO_2 * and High Value for NO_X **
	Billion 2011$			
1	2.9	5.0	6.7	10.0
2	3.2	5.4	7.3	10.8
3	3.4	6.2	8.6	13.0
4	4.2	8.2	11.7	18.1
5	3.1	7.2	10.7	17.2
6	−1.0	3.4	7.1	14.1

* These label values represent the global SCC in 2011, in 2011$. The 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.37—MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NET PRESENT VALUE OF CUSTOMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Customer NPV at 3% Discount Rate added with:			
	SCC Value of \$4.9/t CO_2* and Low Value for NO_X**	SCC Value of \$22.3/t CO_2* and Medium Value for NO_X**	SCC Value of \$36.5/t CO_2* and Medium Value for NO_X**	SCC Value of \$67.6/t CO_2* and High Value for NO_X**
Billion 2011\$				
1	0.5	0.7	0.8	1.1
2	0.9	1.2	1.4	1.9
3	1.3	1.8	2.3	3.3
4	1.3	1.8	2.3	3.3
5	0.0	0.9	1.6	3.0
TSL	Customer NPV at 7% Discount Rate added with:			
	SCC Value of \$4.9/t CO_2* and Low Value for NO_X**	SCC Value of \$22.3/t CO_2* and Medium Value for NO_X**	SCC Value of \$36.5/t CO_2* and Medium Value for NO_X**	SCC Value of \$67.6/t CO_2* and High Value for NO_X**
	Billion 2011\$			
1	0.2	0.3	0.5	0.7
2	0.2	0.5	0.8	1.2
3	0.2	0.8	1.3	2.2
4	0.2	0.8	1.3	2.2
5	−0.7	0.2	0.9	2.3

* These label values represent the global SCC in 2011, in 2011\$. The 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 customer 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. customer 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 the 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 2016–2045. 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 CO_2 in each year. These impacts continue well beyond 2100.

8. 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)(VII))

Electrical steel is a critical consideration in the design and manufacture of distribution transformers, amounting for more than 60 percent of the distribution transformers mass in some designs. Rapid changes in the supply or pricing of certain grades can seriously hinder manufacturers' abilities to meet the market demand and, as a result, this rulemaking has extensively examined the effects of electrical steel supply and availability.

DOE's most important conclusion from this examination is that several energy efficiency levels in each design line are attainable only by using amorphous steel, which is currently produced by only one supplier in any significant volume and that supplier at present does not have enough capacity to supply the industry at all-amorphous standard levels. Several more energy efficiency levels are reachable with the top grades of conventional (grain-oriented) electrical steels, but this would result in distribution transformers that are unlikely to be cost-competitive with the often more-efficient amorphous units. As stated above, switching to amorphous steel is not practicable as there are availability concerns with amorphous steel.

Distribution transformers are also highly customized products. Manufacturers routinely build only one or a handful of units of a particular design and require flexibility with respect to construction materials to remain competitive. Setting a standard that either technologically or economically required amorphous material would both eliminate a large amount of design flexibility and expose the industry to enormous risk with respect to supply and pricing of core steel. For both reasons, DOE considered electrical steel availability to be a significant factor in determining which TSLs were economically justified.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered equipment shall be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy 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 to the greatest extent practicable, in light of 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))

For today's rulemaking, DOE considered the impacts of standards at each TSL, beginning with the max-tech 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 technologically feasible, economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A. 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 customers who may be disproportionately affected by a national standard, and impacts on employment. Section V.B.1 presents the estimated impacts of each TSL for the considered subgroup. DOE discusses the impacts on employment in transformer manufacturing in section V.B.2.b, and discusses the indirect employment impacts in section V.B.3.c.

1. Benefits and Burdens of Trial Standard Levels Considered for Liquid-Immersed Distribution Transformers

Table V.38 and Table V.39 summarize the quantitative impacts estimated for each TSL for liquid-immersed distribution transformers.

TABLE V.38—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
National Energy Savings *quads*.	0.92	1.56	1.76	3.31	3.30	4.09	7.01
NPV of Consumer Benefits *2011$ billion*							
3% discount rate	3.12	4.82	5.62	10.78	10.19	10.27	−8.50
7% discount rate	0.58	0.69	0.91	1.92	1.60	0.74	−12.97
Cumulative Emissions Reduction							
CO_2 (million metric tons).	82.2	143.1	156.5	274.6	273.4	321.8	501.8
NO_X (thousand tons).	69.3	120.6	131.8	231.1	230.1	270.8	421.9
SO_2 (thousand tons).	52.0	90.0	98.4	173.0	172.4	203.2	318.0
Hg (tons)	0.2	0.3	0.3	0.6	0.6	0.7	1.1
Value of Emissions Reduction							
CO_2 2011$ *million**.	259 to 4230	454 to 7390	494 to 8060	855 to 14024	851 to 13960	991 to 16325	1515 to 25144
NO_X − 3% discount rate *2011$ million*.	13 to 138	24 to 242	26 to 263	44 to 454	44 to 452	51 to 525	78 to 799
NO_X − 7% discount rate *2011$ million*.	6 to 57	10 to 100	11 to 109	18 to 185	18 to 184	21 to 211	31 to 314

* Range of the economic value of CO2 reductions is based on estimates of the global benefit of reduced CO2 emissions.

TABLE V.39—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Manufacturer Impacts							
Industry NPV 2011$ million.	527 to 552	466 to 508	462 to 506	389 to 478	382 to 474	358 to 487	181 to 576
Industry NPV % change.	(8.4) to (4.1)	(19.0) to (11.7)	(19.7) to (12.0)	(32.4) to (16.9)	(33.6) to (17.6)	(37.7) to (15.4)	(68.4) to 0.1
Consumer Mean LCC Savings *2011$*							
Design line 1	83	153	153	696	696	618	365
Design line 2	66	278	278	343	330	311	−579
Design line 3	2709	2407	3526	5527	5037	6942	4491
Design line 4	977	977	977	1212	3603	3603	4349
Design line 5	3668	3668	6852	10382	8616	12014	4619

TABLE V.39—SUMMARY OF ANALYTICAL RESULTS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6	TSL 7
Consumer Median PBP *years*							
Design line 1	17.7	24.7	24.7	10.8	10.8	13.7	24.6
Design line 2	5.9	9.9	9.9	11.1	13.0	15.5	31.6
Design line 3	8.5	8.3	5.8	6.5	6.4	7.2	19.1
Design line 4	7.0	7.0	7.0	9.1	5.6	5.6	10.2
Design line 5	6.5	6.5	6.5	9.1	8.5	11.4	22.5
Distribution of Consumer LCC Impacts							
Design line 1							
Net Cost %	37.3	44.2	44.2	7.0	7.0	11.2	42.6
Net Benefit %	62.5	55.6	55.6	92.9	92.9	88.8	57.4
No Impact %	0.2	0.2	0.2	0.2	0.2	0.0	0.0
Design line 2							
Net Cost %	41.5	18.2	18.2	11.4	13.1	17.8	67.2
Net Benefit %	55.2	81.8	81.8	88.6	86.9	82.2	32.8
No Impact %	3.4	0.0	0.0	0.0	0.0	0.0	0.0
Design line 3							
Net Cost (%)	14.5	13.9	12.0	4.0	5.3	4.0	29.9
Net Benefit (%)	84.2	84.8	86.9	95.9	94.7	96.0	70.1
No Impact (%)	1.3	1.3	1.2	0.0	0.0	0.0	0.0
Design line 4							
Net Cost (%)	6.6	6.6	6.6	7.6	2.5	2.5	5.9
Net Benefit (%)	92.8	92.8	92.8	91.8	96.9	96.9	94.1
No Impact (%)	0.6	0.6	0.6	0.6	0.6	0.6	0.0
Design line 5							
Net Cost (%)	30.5	30.5	19.9	9.8	14.8	9.1	41.9
Net Benefit (%)	69.1	69.1	80.0	90.2	85.2	91.0	58.1
No Impact (%)	0.4	0.4	0.1	0.0	0.0	0.0	0.0

First, DOE considered TSL 7, the most efficient level (max tech), which would save an estimated total of 7.01 quads of energy, an amount DOE considers significant. TSL 7 has an estimated NPV of customer benefit of −$12.97 billion using a 7 percent discount rate, and −$8.50 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 7 are 501.0 million metric tons of CO_2, 421.9 thousand tons of NO_X, 318.0 thousand tons of SO_2, and 1.1 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 7 ranges from $1,515 million to $25,144 million.

At TSL 7, the average LCC impact ranges from −$579 for design line 2 to $4,619 for design line 5. The median PBP ranges from 31.6 years for design line 2 to 10.2 years for design line 4. The share of customers experiencing a net LCC benefit ranges from 32.8 percent for design line 2 to 70.1 percent for design line 3.

At TSL 7, the projected change in INPV ranges from a decrease of $394 million to an increase of $0.5 million. If the decrease of $394 million were to occur, TSL 7 could result in a net loss of 68.4 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 7, there is a risk of very large negative impacts on manufacturers due to the substantial capital and engineering costs they would incur and the market disruption associated with the likely transition to a market entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 7 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity. DOE also has concerns about the competitive impact of TSL 7 on the electrical steel industry, as only one proven supplier of amorphous ribbon currently serves the U.S. market.

In view of the foregoing, DOE concludes that, at TSL 7 for liquid-immersed distribution transformers, the benefits of energy savings, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the potential multi-billion dollar negative net economic cost, the economic burden on customers as indicated by large PBPs, significant increases in installed cost, and the large percentage of customers who would experience LCC increases, the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 7. Consequently, DOE has concluded that TSL 7 is not economically justified.

Next, DOE considered TSL 6, which would save an estimated total of 4.09 quads of energy, an amount DOE considers significant. TSL 6 has an estimated NPV of customer benefit of $0.74 billion using a 7 percent discount rate, and $10.27 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 6 are 321.8 million metric tons of CO_2, 270.8 thousand tons of NO_X, 203.2 thousand tons of SO_2, and 0.7 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $991 million to $16,325 million.

At TSL 6, the average LCC impact ranges from $311 for design line 2 to $12,014 for design line 5. The median PBP ranges from 5.6 years for design line 4 to 15.5 years for design line 2. The share of customers experiencing a net LCC benefit ranges from 82.2 percent for design line 2 to 96.9 percent for design line 4.

At TSL 6, the projected change in INPV ranges from a decrease of $217 million to a decrease of $89 million. If the decrease of $217 million were to occur, TSL 6 could result in a net loss of 37.7 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 6, DOE recognizes the risk of very large negative impacts on manufacturers due to the large capital and engineering costs and the market disruption associated with the likely transition to a market entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing their transformers at the price points projected for TSL 6 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous transformer production capacity.

The energy savings under TSL 6 are achievable only by using amorphous steel, which only one supplier currently produces in any significant volume (annual production capacity of approximately 100,000 tons, the vast majority of which serves global demand). Thus, the current availability is far below the amount that would be required to meet the U.S. liquid-immersed transformer market demand of approximately 250,000 tons. Electrical steel is a critical consideration in the manufacture of distribution transformers, accounting for more than 60 percent of the transformer's mass in some designs. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply. DOE also has concerns about the competitive impact of TSL 6 on the electrical steel industry. TSL 6 could jeopardize the ability of silicon steels to compete with amorphous metal, which risks upsetting competitive balance among steel suppliers and between them and their customers.

In view of the foregoing, DOE concludes that, at TSL 6 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 6. Consequently, DOE has concluded that TSL 6 is not economically justified.

Next, DOE considered TSL 5, which would save an estimated total of 3.30 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of $1.60 billion using a 7 percent discount rate, and $10.19 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 5 are 273.4 million metric tons of CO_2, 230.1 thousand tons of NO_X, 172.4 thousand tons of SO_2, and 0.6 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $851 million to $13,960 million.

At TSL 5, the average LCC impact ranges from $330 for design line 2 to$8,616 for design line 5. The median PBP ranges from 5.6 years for design line 4 to 13.0 years for design line 2. The share of customers experiencing a net LCC benefit ranges from 85.2 percent for design line 5 to 96.9 percent for design line 4.

At TSL 5, the projected change in INPV ranges from a decrease of $193 million to a decrease of $101 million. If the decrease of $193 million were to occur, TSL 5 could result in a net loss of 33.6 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on manufacturers due to the large capital and engineering costs they would incur and the market disruption associated with the likely transition to a market almost entirely served by amorphous steel. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 5 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous core transformer production capacity.

Similar to TSL 6 as described above, the energy savings under TSL 5 are achievable only by using amorphous steel, which is currently available from only one supplier with significant volume and that supplier's production capacity of 100,000 tons is far below what would be required to meet market demand for electrical steel. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply. TSL 5 could jeopardize the ability of silicon steels to compete with amorphous metal, which risks upsetting competitive balance among steel suppliers and between them and their customers.

In view of the foregoing, DOE concludes that, at TSL 5 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 5. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 3.31 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of $1.92 billion using a 7 percent discount rate, and $10.78 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 4 are 274.6 million metric tons of CO_2, 231.1 thousand tons of NO_X, 173.0 thousand tons of SO_2, and 0.6 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $855 million to $14,024 million.

At TSL 4, the average LCC impact ranges from $343 for design line 2 to $10,382 for design line 5. The median PBP ranges from 11.1 years for design line 2 to 6.5 years for design line 3. The share of customers experiencing a net LCC benefit ranges from 88.6 percent for design line 2 to 95.9 percent for design line 4.

At TSL 4, the projected change in INPV ranges from a decrease of $186 million to a decrease of $97 million. If the decrease of $186 million were to occur, TSL 4 could result in a net loss of 32.4 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 4, DOE recognizes the risk of large negative impacts on manufacturers due to the substantial capital and engineering costs they would incur. Additionally, if manufacturers' concerns about their customers rebuilding rather than replacing transformers at the price points projected for TSL 4 are realized, new transformer sales would suffer and make it even more difficult to recoup investments in amorphous core transformer production capacity.

DOE is also concerned that TSL 4, like the higher TSLs, will require amorphous steel to be competitive in many applications and at least a few design lines. As stated previously, the available supply of amorphous steel is well below the amount that would likely be required to meet the U.S. liquid-immersed distribution transformer market demand. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. Therefore, setting a standard that requires amorphous material would expose the industry to enormous risk with respect to core steel supply.

In addition, depending on how steel prices react to a standard, DOE believes TSL 4 could threaten the viability of a place in the market for conventional steel. Therefore, as with higher TSLs, DOE has concerns about the competitive impact of TSL 4 on the electrical steel manufacturing industry.

In view of the foregoing, DOE concludes that, at TSL 4 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 4. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 1.76 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $0.91 billion using a 7 percent discount rate, and $6.62 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 3 are 156.5 million metric tons of CO_2, 131.8 thousand tons of NO_X, 98.4 thousand tons of SO_2, and 0.3 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $494 million to $8,060 million.

At TSL 3, the average LCC impact ranges from $153 for design line 1 to $6,852 for design line 5. The median PBP ranges from 24.7 years for design line 1 to 5.8 years for design line 3. The share of customers experiencing a net LCC benefit ranges from 55.6 percent for design line 1 to 92.8 percent for design line 4.

At TSL 3, the projected change in INPV ranges from a decrease of $113 million to a decrease of $69 million. If the decrease of $113 million were to occur, TSL 3 could result in a net loss of 19.7 percent in INPV to manufacturers. At TSL 3, DOE recognizes the risk of large negative impacts on manufacturers due to the large capital and engineering costs they would incur.

Although the industry can manufacture liquid-immersed distribution transformers at TSL 3 from M3 or lower grade steels, the positive LCC and national impacts results described above are based on lowest first-cost designs, which include amorphous steel for all the design lines analyzed. As is the case with higher TSLs, DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. If manufacturers were to meet standards at TSL 3 using M3 or lower grade steels, DOE's analysis shows that the LCC impacts are negative.[71]

[71] DOE conducted a sensitivity analysis where LCC results are presented for liquid-immersed transformers without amorphous steel; see appendix 8–C in the final rule TSD.

In view of the foregoing, DOE concludes that, at TSL 3 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a large reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 3 in a cost-effective manner. Consequently, DOE has concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 1.56 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $0.69 billion using a 7-percent discount rate, and $4.82 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 143.1 million metric tons of CO_2, 120.6 thousand tons of NO_X, 90.0 thousand tons of SO_2, and 0.3 ton of Hg. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $454 million to $7,390 million.

At TSL 2, the average LCC impact ranges from $153 for design line 1 to $3,668 for design line 5. The median PBP ranges from 24.7 years for design line 1 to 6.5 years for design line 5. The share of customers experiencing a net LCC benefit ranges from 55.6 percent for design line 1 to 92.8 percent for design line 4.

At TSL 2, the projected change in INPV ranges from a decrease of $110 million to a decrease of $67 million. If the decrease of $110 million were to occur, TSL 2 could result in a net loss of 19 percent in INPV to manufacturers of liquid-immersed distribution transformers. At TSL 2, DOE recognizes the risk of negative impacts on manufacturers due to the significant capital and engineering costs they would incur.

Although the industry can manufacture liquid-immersed transformers at TSL 2 from M3 or lower grade steels, the positive LCC and national impacts results described above are based on lowest first-cost designs, which include amorphous steel for design line 2. This design line represents approximately 44 percent of all liquid-immersed transformer shipments by MVA. Amorphous steel is currently available in significant volume from one supplier whose annual production capacity is below the amount that would be required to meet the demand for design line 2 under TSL 2. DOE is concerned that the current supplier, together with others that might enter the market, would not be able to increase production of amorphous steel rapidly enough to supply the amounts that would be needed by transformer manufacturers before 2015. If manufacturers were to meet standards at TSL 2 using M3 or lower grade steels, DOE's analysis shows that the LCC impacts would be negative.

In view of the foregoing, DOE concludes that, at TSL 2 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the capital and engineering costs that could result in a reduction in INPV for manufacturers, and the risk that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards at TSL 2 in a cost-effective manner. Consequently, DOE has concluded that TSL 2 is not economically justified.

Next, DOE considered TSL 1, which would save an estimated total of 0.92 quad of energy, an amount DOE considers significant. TSL 1 has an estimated NPV of customer benefit of $0.58 billion using a 7-percent discount rate, and $3.12 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 1 are 82.2 million metric tons of CO_2, 69.3 thousand tons of NO_X, 52.0 thousand tons of SO_2, and 0.2 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 1 ranges from $259 million to $4,230 million.

At TSL 1, the average LCC impact ranges from $83 for design line 2 to $3,668 for design line 5. The median PBP ranges from 17.7 years for design line 1 to 5.9 years for design line 2. The share of customers experiencing a net LCC benefit ranges from 55.2 percent for design line 2 to 92.8 percent for design line 4.

At TSL 1, the projected change in INPV ranges from a decrease of $48 million to a decrease of $24 million. If the decrease of $48 million were to occur, TSL 1 could result in a net loss of 8.4 percent in INPV to manufacturers of liquid-immersed distribution transformers.

The energy savings under TSL 1 are achievable without using amorphous steel. Therefore, the aforementioned risks that manufacturers may not be able to obtain the quantities of amorphous steel required to meet standards are not present under TSL 1.

After considering the analysis and weighing the benefits and the burdens, DOE has concluded that at TSL 1 for liquid-immersed distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average customer LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the emissions reductions would outweigh the potential reduction in INPV for manufacturers.

In view of the foregoing, DOE has concluded that TSL 1 would save a significant amount of energy and is technologically feasible and economically justified. For the above considerations, DOE today adopts the energy conservation standards for liquid-immersed distribution transformers at TSL 1. Table V.40 presents the energy conservation standards for liquid-immersed distribution transformers.

TABLE V.40—ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Electrical Efficiency by kVA and Equipment Class			
Equipment Class 1		Equipment Class 2	
kVA	%	kVA	%
10	98.70	15	98.65
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1000	99.43
667	99.52	1500	99.48
833	99.55	2000	99.51
		2500	99.53

2. Benefits and Burdens of Trial Standard Levels Considered for Low-Voltage Dry-Type Distribution Transformers

Table V.41 and Table V.42 summarize the quantitative impacts estimated for each TSL for low-voltage dry-type distribution transformers.

TABLE V.41—SUMMARY OF ANALYTICAL RESULTS FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
National Energy Savings (quads)	2.28	2.43	3.05	4.39	4.48	4.94
NPV of Customer Benefits (2011$ billion)						
3% discount rate	8.38	9.04	10.38	13.65	11.80	5.17
7% discount rate	2.45	2.67	2.82	3.34	2.22	-1.92
Cumulative Emissions Reduction						
CO_2 (million metric tons)	151.3	161.6	203.0	292.8	297.6	319.3
NO_X (thousand tons)	127.6	136.4	171.3	247.0	251.0	269.3
SO_2 (thousand tons)	110.1	117.6	147.8	213.2	216.7	232.4
Hg (tons)	0.4	0.4	0.5	0.8	0.8	0.8
Value of Emissions Reduction (2011$ million)						
CO_2*	450 to 7512	480 to 8020	603 to 10075	870 to 14535	884 to 14771	949 to 15847
NO_X − 3% discount rate	23 to 238	25 to 254	31 to 319	45 to 460	45 to 468	49 to 502
NO_X − 7% discount rate	9 to 92	10 to 99	12 to 124	17 to 179	18 to 182	19 to 195

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.42—SUMMARY OF ANALYTICAL RESULTS FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (2011$ million)	230 to 252	227 to 249	219 to 266	199 to 280	191 to 299	159 to 357
Industry NPV (% change)	(3.4) to 6.2	(4.7) to 5.0	(7.8) to 11.8	(16.4) to 17.8	(19.7) to 25.7	(33.1) to 50.1
Consumer Mean LCC Savings (2011$)						
Design line 6	0	0	325	148	148	−992
Design line 7	1526	1678	1838	2280	2280	212
Design line 8	2588	2588	2724	4261	−2938	−2938
Consumer Median PBP (years)						
Design line 6	0.0	0.0	12.4	15.7	15.7	31.7
Design line 7	3.9	3.6	4.1	6.3	6.3	16.8
Design line 8	7.7	7.7	11.3	10.1	22.5	22.5
Distribution of Consumer LCC Impacts						
Design line 6						
Net Cost (%)	0.0	0.0	16.5	37.8	37.8	96.6
Net Benefit (%)	0.0	0.0	83.5	62.2	62.2	3.4
No Impact (%)	100.0	100.0	0.0	0.0	0.0	0.0
Design line 7						
Net Cost (%)	1.5	1.3	1.7	3.3	3.3	45.6
Net Benefit (%)	98.4	98.7	98.3	96.7	96.7	54.4
No Impact (%)	0.1	0.1	0.0	0.0	0.0	0.0
Design line 8						
Net Cost (%)	4.7	4.7	13.3	9.0	79.3	79.3
Net Benefit (%)	95.3	95.3	86.7	91.0	20.7	20.7
No Impact (%)	0.0	0.0	0.0	0.0	0.0	0.0

First, DOE considered TSL 6, the most efficient level (max tech), which would save an estimated total of 4.94 quads of energy, an amount DOE considers significant. TSL 6 has an estimated NPV of customer benefit of −$1.92 billion using a 7-percent discount rate, and $5.17 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 6 are 319.3 million metric tons of CO_2, 269.3 thousand tons of NO_X, 232.4 thousand tons of SO_2, and 0.8 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 6 ranges from $949 million to $15,847 million.

At TSL 6, the average LCC impact ranges from −$2,938 for design line 8 to $212 for design line 7. The median PBP ranges from 31.7 years for design line 6 to 16.8 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 3.4 percent for design line 6 to 54.4 percent for design line 7.

At TSL 6, the projected change in INPV ranges from a decrease of $79 million to an increase of $119 million. If the decrease of $79 million occurs, TSL 6 could result in a net loss of 33.1 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 6, DOE recognizes the risk of very large negative impacts on the industry. TSL 6 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

In view of the foregoing, DOE concludes that, at TSL 6 for low-voltage dry-type distribution transformers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on customers (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases at design line 6 and design line 8), the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has concluded that TSL 6 is not economically justified.

Next, DOE considered TSL 5, which would save an estimated total of 4.48 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of $2.22 billion using a 7 percent discount rate, and $11.80 billion using a 3 percent discount rate.

The cumulative emissions reductions at TSL 5 are 297.6 million metric tons of CO_2, 251.0 thousand tons of NO_X, 216.7 thousand tons of SO_2, and 0.8 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $884 million to $14,771 million.

At TSL 5, the average LCC impact ranges from −$2,938 for design line 8 to $2,280 for design line 7. The median PBP ranges from 22.5 years for design line 8 to 6.3 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 20.7 percent for design line 8 to 96.7 percent for design line 7.

At TSL 5, the projected change in INPV ranges from a decrease of $47 million to an increase of $61 million. If the decrease of $47 million occurs, TSL 5 could result in a net loss of 19.7 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on the industry. TSL 5 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

In view of the foregoing, DOE concludes that, at TSL 5 for low-voltage dry-type distribution transformers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on customers at design line 8 (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases), the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 4.39 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of $3.34 billion using a 7-percent discount rate, and $13.65 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 292.8 million metric tons of CO_2, 247.0 thousand tons of NO_X, 213.2 thousand tons of SO_2, and 0.8 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $870 million to $14,535 million.

At TSL 4, the average LCC impact ranges from $148 for design line 6 to $4,261 for design line 8. The median PBP ranges from 15.7 years for design line 6 to 6.3 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 62.2 percent for design line 6 to 96.7 percent for design line 7.

At TSL 4, the projected change in INPV ranges from a decrease of $39 million to an increase of $42 million. If the decrease of $39 million occurs, TSL 4 could result in a net loss of 16.4 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 4, DOE recognizes the risk of very large negative impacts on the industry. As with the higher TSLs, TSL 4 would require manufacturers to scrap nearly all production assets and create transformer designs with which most, if not all, have no experience. DOE is concerned, in particular, about large impacts on small businesses, which may not be able to procure sufficient volume of amorphous steel at competitive prices, if at all.

Additionally, TSL 4 requires significant investment in advanced core construction equipment such are step-lap mitering machines or wound core production lines, as butt lap designs, even with high-grade designs, are unlikely to comply. Given their more limited engineering resources and capital, small businesses may find it difficult to make these designs at competitive prices and may have to exit the market. At the same time, however, those small manufacturers may be able to source their cores—and many are doing so to a significant extent currently—which could mitigate impacts.

In view of the forgoing, DOE concludes that, at TSL 4 for low-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the potential for very large negative impacts on the manufacturers, and the potential burden on small manufacturers. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 3.05 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $2.82 billion using a 7-percent discount rate, and $10.38 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 203.0 million metric tons of CO_2, 171.3 thousand tons of NO_X, 147.8 thousand tons of SO_2, and 0.5 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $603 million to $10,075 million.

At TSL 3, the average LCC impact ranges from $325 for design line 6 to $2,724 for design line 8. The median PBP ranges from 12.4 years for design line 6 to 4.1 years for design line 7. The share of customers experiencing a net LCC benefit ranges from 83.5 percent for design line 6 to 98.3 percent for design line 7.

At TSL 3, the projected change in INPV ranges from a decrease of $19 million to an increase of $28 million. If the decrease of $19 million occurs, TSL 3 could result in a net loss of 7.8 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 3, DOE recognizes the risk of negative impacts on the industry, particularly the small manufacturers. While TSL 3 could likely be met with M4 steel, DOE's analysis shows that this design option is at the edge of its technical feasibility at the efficiency levels comprised by TSL 3. Although these levels could be met with M3 or better steels, DOE is concerned that a significant number of small manufacturers would be unable to acquire these steels in sufficient supply and quality to compete.

Additionally, TSL 3 requires significant investment in advanced core construction equipment such are step-lap mitering machines or wound core production lines, as butt lap designs, even with high-grade designs, are unlikely to comply. Given their more limited engineering resources and capital, small businesses may find it difficult to make these designs at competitive prices and may have to exit the market. At the same time, however, those small manufacturers may be able to source their cores—and many are doing so to a significant extent currently—which could mitigate impacts.

In view of the foregoing, DOE concludes that, at TSL 3 for low-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive average LCC savings, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the risk of negative impacts on the industry, particularly the small manufacturers. Consequently, DOE has concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 2.43 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $2.67 billion using a 7-percent discount rate, and $9.04 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 161.6 million metric tons of CO_2, 136.4 thousand tons of NO_X, 117.6 thousand tons of SO_2, and 0.4 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $480 million to $8,020 million.

At TSL 2, the average LCC impact ranges from $0 for design line 6 to $2,588 for design line 8. The median PBP ranges from 7.7 years for design line 8 to 0 years for design line 6. The share of customers experiencing a net LCC benefit ranges from 0 percent for design line 6 to 98.7 percent for design line 7.

At TSL 2, the projected change in INPV ranges from a decrease of $11 million to an increase of $12 million. If the decrease of $11 million occurs, TSL 2 could result in a net loss of 4.7 percent in INPV to manufacturers of low-voltage dry-type distribution transformers. At TSL 2, manufacturers have the option of continuing to produce transformers using butt-lap technology, investing in mitering equipment, or sourcing their cores. Furthermore, since TSL 2 represents EL 3 for DL 7 and EL 2 for DL 8 (and baseline for DL 6), manufacturers may benefit from being able to standardize to NEMA Premium® levels for low-voltage dry-type distribution transformers.

After considering the analysis and weighing the benefits and the burdens, DOE has concluded that at TSL 2 for low-voltage dry-type distribution transformers, the benefits of energy savings, NPV of customer benefit, positive customer LCC impacts, emissions reductions and the estimated monetary value of the emissions reductions would outweigh the risk of small negative impacts on the manufacturers. In particular, DOE has concluded that TSL 2 would save a significant amount of energy and is technologically feasible and economically justified. For the reasons given above, DOE today adopts the energy conservation standards for low-voltage dry-type distribution transformers at TSL 2. Table V.43 presents the energy conservation standards for low-voltage dry-type distribution transformers.

TABLE V.43—ENERGY CONSERVATION STANDARDS FOR LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Electrical Efficiency by kVA and Equipment Class			
Equipment Class 3		Equipment Class 4	
kVA	%	kVA	%
15	97.70	15	97.89
25	98.00	30	98.23
37.5	98.20	45	98.40
50	98.30	75	98.60
75	98.50	112.5	98.74
100	98.60	150	98.83
167	98.70	225	98.94
250	98.80	300	99.02
333	98.90	500	99.14
		750	99.23
		1000	99.28

3. Benefits and Burdens of Trial Standard Levels Considered for Medium-Voltage Dry-Type Distribution Transformers

Table V.44 and Table V.45 summarize the quantitative impacts estimated for each TSL for medium-voltage dry-type distribution transformers.

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National Energy Savings (*quads*)	0.15	0.29	0.53	0.53	0.84
NPV of Consumer Benefits (*2011$ billion*)					
3% discount rate	0.49	0.79	1.12	1.12	−0.20
7% discount rate	0.13	0.17	0.12	0.12	−0.89
Cumulative Emissions Reduction					
CO_2 (million metric tons)	11.2	20.9	40.7	40.7	61.3
NO_X (thousand tons)	9.34	17.7	34.2	34.2	51.5
SO_2 (thousand tons)	7.1	13.3	25.7	25.7	38.7
Hg (*tons*)	0.02	0.04	0.10	0.10	0.14
Value of Emissions Reduction (2011$ million)					
CO_2 *	35 to 571	65 to 1065	126 to 2067	126 to 2067	190 to 3117
NO_X − 3% discount rate	2 to 18	3 to 34	6 to 67	6 to 67	10 to 100
NO_X − 7% discount rate	1 to 7	1 to 14	3 to 27	3 to 27	4 to 41

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.45—SUMMARY OF ANALYTICAL RESULTS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (2011$ million)	67 to 69	66 to 72	58 to 74	58 to 74	35 to 82
Industry NPV (% change)	(2.0) to 1.0	(4.2) to 4.4	(15.6) to 8.3	(15.5) to 8.2	(49.7) to 18.7
Consumer Mean LCC Savings (2011$)					
Design line 9	787	787	1514	1514	−299
Design line 10	4604	4455	4455	4455	−14727
Design line 11	996	996	1849	1849	−4166
Design line 12	4537	6790	8594	8594	−14496
Design line 13A	−27	−27	311	−1019	−12053
Design line 13B	2494	4346	4346	4346	−6823
Consumer Median PBP (years)					
Design line 9	2.6	2.6	6.1	6.1	18.5
Design line 10	1.1	8.6	8.6	8.6	27.5
Design line 11	10.6	10.6	13.6	13.6	24.1
Design line 12	6.0	8.5	12.3	12.3	24.7
Design line 13A	16.1	16.1	16.2	20	35.3
Design line 13B	4.5	12.2	12.2	12.2	20.6
Distribution of Consumer LCC Impacts					
Design line 9					
Net Cost (%)	3.6	3.6	5.9	5.9	57.4
Net Benefit (%)	83.2	83.2	94.1	94.1	42.6
No Impact (%)	13.3	13.3	0.0	0.0	0.0
Design line 10					
Net Cost (%)	3.6	3.6	5.9	5.9	57.4
Net Benefit (%)	83.2	83.2	94.1	94.1	42.6
No Impact (%)	13.3	13.3	0.0	0.0	0.0
Design line 11					
Net Cost (%)	21.9	21.9	25.9	25.9	82.7
Net Benefit (%)	78.1	78.1	74.1	74.1	17.4
No Impact (%)	0.0	0.0	0.0	0.0	0.0

TABLE V.45—SUMMARY OF ANALYTICAL RESULTS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Design line 12					
Net Cost (%)	7.1	7.6	17.1	17.1	85.4
Net Benefit (%)	92.9	92.4	82.9	82.9	14.6
No Impact (%)	0.0	0.0	0.0	0.0	0.0
Design line 13A					
Net Cost (%)	54.2	54.2	45.5	66.3	98.5
Net Benefit (%)	45.8	45.8	54.5	33.7	1.5
No Impact (%)	0.0	0.0	0.0	0.0	0.0
Design line 13B					
Net Cost (%)	30.5	27.3	27.3	27.3	70.4
Net Benefit (%)	69.3	72.7	72.7	72.7	29.6
No Impact (%)	0.2	0.0	0.0	0.0	0.0

First, DOE considered TSL 5, the most efficient level (max tech), which would save an estimated total of 0.84 quad of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of customer benefit of −$0.89 billion using a 7-percent discount rate, and −$0.20 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 5 are 61.3 million metric tons of CO_2, 51.5 thousand tons of NO_X, 38.7 thousand tons of SO_2, and 0.14 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $190 million to $3,117 million.

At TSL 5, the average LCC impact ranges from −$14,727 for design line 10 to −299 for design line 9. The median PBP ranges from 35.3 years for design line 13A to 18.5 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 1.5 percent for design line 13A to 42.6 percent for design line 9.

At TSL 5, the projected change in INPV ranges from a decrease of $34 million to an increase of $13 million. If the decrease of $34 million occurs, TSL 5 could result in a net loss of 49.7 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 5, DOE recognizes the risk of very large negative impacts on industry because they would likely be forced to move to amorphous core steel technology, with which there is no experience in this market.[72]

In view of the foregoing, DOE concludes that, at TSL 5 for medium-voltage dry-type distribution transformers, the benefits of energy savings, generating capacity reductions, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative NPV of customer benefit, the economic burden on customers (as indicated by negative average LCC savings, large PBPs, and the large percentage of customers who would experience LCC increases), and the risk of very large negative impacts on the manufacturers. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 0.53 quad of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of customer benefit of $0.12 billion using a 7-percent discount rate, and $1.12 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 40.7 million metric tons of CO_2, 34.2 thousand tons of NO_X, 25.7 thousand tons of SO_2, and 0.1 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $126 million to $2,067 million.

At TSL 4, the average LCC impact ranges from −$1019 for design line 13A to $8,594 for design line 12. The median PBP ranges from 20.0 years for design line 13B to 6.1 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 33.7 percent for design line 13A to 94.1 percent for design line 9.

At TSL 4, the projected change in INPV ranges from a decrease of $11 million to an increase of $6 million. If the decrease of $11 million occurs, TSL 4 could result in a net loss of 15.5 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 4, DOE recognizes the risk of very large negative impacts on most manufacturers in the industry who have little experience with the steels that would be required. Small businesses, in particular, with limited engineering resources, may not be able to convert their lines to employ thinner steels and may be disadvantaged with respect to access to key materials, including Hi-B steels.

In view of the foregoing, DOE concludes that, at TSL 4 for medium-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the risk of very large negative impacts on the manufacturers, particularly small businesses. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.53 quad of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of customer benefit of $0.12 billion using a 7-percent discount rate, and $1.12 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 40.7 million metric tons of CO_2, 34.2 thousand tons of NO_X, 25.7 thousand tons of SO_2, and 0.1 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $126 million to $2,067 million.

At TSL 3, the average LCC impact ranges from $311 for design line 13A to $8594 for design line 12. The median

[72] See section IV.I.5.a for further detail.

PBP ranges from 16.2 years for design line 13A to 6.1 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 54.5 percent for design line 13A to 94.1 percent for design line 9.

At TSL 3, the projected change in INPV ranges from a decrease of $11 million to an increase of $6 million. If the decrease of $11 million occurs, TSL 3 could result in a net loss of 15.6 percent in INPV to manufacturers of medium-voltage dry-type transformers. At TSL 3, DOE recognizes the risk of large negative impacts on most manufacturers in the industry who have little experience with the steels that would be required. As with TSL 4, small businesses, in particular, with limited engineering resources, may not be able to convert their lines to employ thinner steels and may be disadvantaged with respect to access to key materials, including Hi-B steels.

In view of the foregoing, DOE concludes that, at TSL 3 for medium-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the risk of large negative impacts on the manufacturers, particularly small businesses. Consequently, DOE has concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.29 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of customer benefit of $0.17 billion using a 7-percent discount rate, and $0.79 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 20.9 million metric tons of CO_2, 17.7 thousand tons of NO_X, 13.3 thousand tons of SO_2, and 0.04 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $65 million to $1,065 million.

At TSL 2, the average LCC impact ranges from $$-$27 for design line 13A to $6,790 for design line 12. The median PBP ranges from 16.1 years for design line 13A to 2.6 years for design line 9. The share of customers experiencing a net LCC benefit ranges from 45.8 percent for design line 13A to 92.4 percent for design line 12.

At TSL 2, the projected change in INPV ranges from a decrease of $3 million to an increase of $3 million. If the decrease of $3 million occurs, TSL 2 could result in a net loss of 4.2 percent in INPV to manufacturers of medium-voltage dry-type distribution transformers. At TSL 2, DOE recognizes the risk of small negative impacts if manufacturers are unable to recoup investments made to meet the standard.

After considering the analysis and weighing the benefits and the burdens, DOE has concluded that at TSL 2 for medium-voltage dry-type distribution transformers, the benefits of energy savings, positive NPV of customer benefit, positive impacts on consumers (as indicated by positive average LCC savings for five of the six design lines, favorable PBPs, and the large percentage of customers who would experience LCC benefits), emission reductions, and the estimated monetary value of the emissions reductions would outweigh the risk of small negative impacts if manufacturers are unable to recoup investments made to meet the standard. In particular, DOE has concluded that TSL 2 would save a significant amount of energy and is technologically feasible and economically justified. In addition, DOE notes that TSL 2 corresponds to the standards that were agreed to by the DOE Efficiency and Renewables Advisory Committee (ERAC) subcommittee, as described in section II.B.2. Based on the above considerations, DOE today adopts the energy conservation standards for medium-voltage dry-type distribution transformers at TSL 2. Table V.46 presents the energy conservation standards for medium-voltage dry-type distribution transformers.

TABLE V.46—ENERGY CONSERVATION STANDARDS FOR MEDIUM-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS

Electrical efficiency by kVA and equipment class											
Equipment class 5		Equipment class 6		Equipment class 7		Equipment class 8		Equipment class 9		Equipment class 10	
kVA	%	kVA	%	kVA	%	kVA	%	kVA	%	kVA	%
15	98.10	15	97.50	15	97.86	15	97.18	....	....	....	....
25	98.33	30	97.90	25	98.12	30	97.63	....	....	....	....
37.5	98.49	45	98.10	37.5	98.30	45	97.86	....	....	....	....
50	98.60	75	98.33	50	98.42	75	98.13	....	....	....	....
75	98.73	112.5	98.52	75	98.57	112.5	98.36	75	98.53	....	....
100	98.82	150	98.65	100	98.67	150	98.51	100	98.63	....	....
167	98.96	225	98.82	167	98.83	225	98.69	167	98.80	225	98.57
250	99.07	300	98.93	250	98.95	300	98.81	250	98.91	300	98.69
333	99.14	500	99.09	333	99.03	500	98.99	333	98.99	500	98.89
500	99.22	750	99.21	500	99.12	750	99.12	500	99.09	750	99.02
667	99.27	1000	99.28	667	99.18	1000	99.20	667	99.15	1000	99.11
833	99.31	1500	99.37	833	99.23	1500	99.30	833	99.20	1500	99.21
		2000	99.43			2000	99.36			2000	99.28
....	....	2500	99.47			2500	99.41			2500	99.33

4. Summary of Benefits and Costs (Annualized) of Today's 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 of the benefits from operating products that meet today's standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing customer NPV); and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[73] The value of the CO_2 reductions 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. customer 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 different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2016–2045. 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 CO_2 in each year. These impacts continue well beyond 2100.

Table V.47 shows the annualized values for today's standards for distribution transformers. The results for 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 2011), the cost of the standards in today's rule is $266 million per year in increased equipment costs, while the benefits are $581 million per year in reduced equipment operating costs, $237 million in CO_2 reductions, and $8.60 million in reduced NO_X emissions. In this case, the net benefit amounts to $561 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 2011), the cost of the standards in today's rule is $282 million per year in increased equipment costs, while the benefits are $983 million per year in reduced operating costs, $237 million in CO_2 reductions, and $12.67 million in reduced NO_X emissions. In this case, the net benefit amounts to $950 million per year.

TABLE V.47—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR DISTRIBUTION TRANSFORMERS SOLD IN 2016–2045

	Discount rate %	Million 2011$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating cost savings	7%	581	559	590.
	3%	983	930	1003.
CO_2 reduction monetized value ($4.9/t case)**	5%	57.7	57.7	57.7.
CO_2 reduction monetized value ($22.3/t case)**	3%	237	237	237.
CO_2 reduction monetized value ($36.5/t case)**	2.5%	377	377	377.
CO_2 reduction monetized value ($67.6/t case)**	3%	721	721	721.
NO_X reduction monetized value ($2,591/ton)**	7%	8.60	8.60	8.60.
	3%	12.67	12.67	12.67.
Total benefits†	7% plus CO_2 range	648 to 1311	625 to 1288	656 to 1319.
	7%	827	805	836.
	3% plus CO_2 range	1053 to 1716	1000 to 1663	1074 to 1737.
	3%	1233	1179	1253.
Costs				
Incremental equipment costs	7%	266	300	257.
	3%	282	325	271.
Net Benefits				
Total †	7% plus CO_2 range	381 to 1044	325 to 988	400 to 1063.
	7%	561	504	579.
	3% plus CO_2 range	771 to 1434	675 to 1338	803 to 1466.
	3%	950	854	982.

* The Primary, Low Net Benefits, and High Net Benefits Estimates utilize forecasts of energy prices from the *AEO 2012* reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect no change in the Primary estimate, rising product prices in the Low Net Benefits estimate, and declining product prices in the High Net Benefits estimate.

** The CO_2 values represent global monetized values of the SCC, in 2011$, in 2011 under several scenarios. The values of $4.9, $22.3, and $36.5 per metric ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6/t represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X (in 2011$) 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 series corresponding to SCC value of $22.3/t. In the rows labeled "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.

[73] 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.47. 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.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 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 addressed by today's standards are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the commercial equipment 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 some external benefits resulting from improved energy efficiency of distribution transformers 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.

The specific market failure that the energy conservation standard addresses for distribution transformers is that a substantial portion of distribution transformer purchasers are not evaluating the cost of transformer losses when they make distribution transformer purchase decisions. Consequently, distribution transformers are being purchased that do not provide the minimum LCC to the equipment owners.

For distribution transformers, the Institute of Electronic and Electrical Engineers Inc. (IEEE) has documented voluntary guidelines for the economic evaluation of distribution transformer losses, IEEE PC57.12.33/D8. These guidelines document economic evaluation methods for distribution transformers that are common practice in the utility industry. But while economic evaluation of transformer losses is common, it is not a universal practice. DOE collected information during the course of the previous energy conservation standard rulemaking to estimate the extent to which distribution transformer purchases are evaluated. Data received from NEMA indicated that these guidelines or similar criteria are applied to approximately 75 percent of liquid-immersed distribution transformer purchases, 50 percent of small capacity medium-voltage dry-type transformer purchases, and 80 percent of large capacity medium-voltage dry-type transformer purchases. Therefore, 25 percent, 50 percent, and 20 percent of such purchases in these segments do not employ economic evaluation of transformer losses. These are the portions of the distribution transformer market in which there is market failure. Today's energy conservation standards would eliminate from the market those distribution transformers designs that are purchased on a purely minimum first cost basis, but which would not likely be purchased by equipment buyers when the economic value of equipment losses are properly evaluated.

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 has 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.

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 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 (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, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 (*http://energy.gov/gc/office-general-counsel*). DOE reviewed the February 2012 NOPR and today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

As presented and discussed in the following sections, the FRFA describes potential impacts on small manufacturers associated with the required product and capital conversion costs at each TSL and discusses alternatives that could minimize these impacts. Chapter 12 of the TSD contains more information about the impact of this rulemaking on manufacturers.

1. Statement of the Need for, and Objectives of, the Rule

The reasons why DOE is establishing the standards in today's final rule and the objectives of these standards are provided elsewhere in the preamble and not repeated here.

2. Summary of and Responses to the Significant Issues Raised by the Public Comments, and a Statement of Any Changes Made as a Result of Such Comments

This FRFA incorporates the IRFA and public comments received on the IRFA and the economic impacts of the rule. DOE provides responses to these comments in the discussion below on the compliance impacts of the rule and elsewhere in the preamble. DOE modified the standards adopted in today's final rule in response to comments received, including those from small businesses, as described in the preamble.

3. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For manufacturers of distribution transformers, 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 NAICS code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Distribution transformer manufacturing is classified under NAICS 335311, ''Power, Distribution and Specialty Transformer Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

In the February 2012 NOPR, DOE identified approximately 10 liquid-immersed distribution transformer manufacturers, 14 LVDT manufacturers, and 17 MVDT manufacturers of covered equipment that can be considered small businesses. 77 FR 7282 (February 10, 2012). Of the liquid-immersed distribution transformer small business manufacturers, DOE was able to reach and discuss potential standards with six of the 10 small business manufacturers. Of the LVDT manufacturers, DOE was able to contact and discuss potential standards with seven of the 14 small business manufacturers. Of the MVDT manufacturers, DOE was able to reach and discuss potential standards with five of the 17 small business manufacturers. DOE also obtained information about small business impacts while interviewing large manufacturers.

b. Distribution Transformer Industry Structure

Liquid Immersed.

Six major manufacturers supply more than 80 percent of the market for liquid-immersed transformers. None of the major manufacturers of distribution transformers covered in this rulemaking are considered to be small businesses. The vast majority of shipments are manufactured domestically. Electric utilities compose the customer base and typically buy on first-cost. Many small manufacturers position themselves towards the higher end of the market or in particular product niches, such as network transformers or harmonic mitigating transformers, but, in general, competition is based on price after a given unit's specifications are prescribed by a customer.

Low-Voltage Dry-Type.

Four major manufacturers supply more than 80 percent of the market for low-voltage dry-type transformers. None of the major manufacturers of LVDT distribution transformers covered in this rulemaking are small businesses. The customer base rarely purchases on efficiency and is very first-cost conscious, which, in turn, places a premium on economies of scale in manufacturing. DOE estimates approximately 80 percent of the market is served by imports, mostly from Canada and Mexico. Many of the small businesses that compete in the low-voltage dry-type market produce specialized transformers that are not covered under standards. Roughly 50 percent of the market by revenue is not covered under DOE standards. This market is much more fragmented than the one serving DOE-covered LVDT transformers.

In the DOE-covered LVDT market, low-volume manufacturers typically do not compete directly with large manufacturers using business models similar to those of their bigger rivals because scale disadvantages in purchasing and production are usually too great a barrier in this portion of the market. The exceptions to this rule are those companies that also compete in the medium-voltage market and, to some extent, are able to leverage that experience and production economies. More typically, low-volume manufacturers focus their operations on one or two parts of the value chain—rather than all of it—and focus on market segments outside of the high-volume baseline efficiency market.

In terms of operations, some small firms focus on the engineering and design of transformers and source the production of the cores or even the whole transformer, while other small firms focus on just production and rebrand for companies that offer broader solutions through their own sales and distribution networks.

In terms of market focus, many small firms compete entirely in distribution transformer markets that are not covered by statute. DOE did not attempt to contact companies operating solely in this very fragmented market. Of those that do compete in the DOE-covered market, a few small businesses reported a focus on the high-end of the market, often selling NEMA Premium® (equivalent to EL3, EL3, and EL2 for DL6, DL7 and DL8, respectively) or better transformers as retrofit opportunities. Others focus on particular applications or niches, like data centers, and become well-versed in the unique needs of a particular customer base.

Medium-Voltage Dry-Type.

The medium-voltage dry-type transformer market is relatively consolidated with one large company holding a substantial share of the market. Electric utilities and industrial users make up most of the customer base and typically buy on first-cost or features other than efficiency. DOE estimates that at least 75 percent of production occurs domestically. Several manufacturers also compete in the power transformer market. Like the LVDT industry, most small business manufacturers in the MVDT industry often produce transformers not covered under DOE standards. DOE estimates that 10 percent of the market is not covered under standards.

c. Comparison Between Large and Small Entities

Small distribution transformer manufacturers differ from large manufacturers in several ways that affect the extent to which they would be impacted by the proposed standards. Characteristics of small manufacturers include: lower production volumes, fewer engineering resources, less technical expertise, lack of purchasing power for high performance steels, and less access to capital.

Lower production volumes are the root cause of most small business disadvantages, particularly for a small manufacturer that is vertically integrated. A lower-volume manufacturer's conversion costs would need to be spread over fewer units than a larger competitor. Thus, unless the small business can differentiate its product in some way that earns a price premium, the small business is a ''price taker'' and experiences a reduction in profit per unit relative to the large manufacturer. Therefore, because much of the same equipment would need to be purchased by both large and small manufacturers in order to produce transformers (in-house) at higher TSLs, undifferentiated small manufacturers would face a greater variable cost penalty because they must depreciate the one-time conversion expenditures over fewer units.

Smaller companies are also more likely to have more limited engineering resources and they often operate with lower levels of design and manufacturing sophistication. Smaller companies typically also have less experience and expertise in working with more advanced technologies, such as amorphous core construction in the liquid-immersed market or step-lap mitering in the dry-type markets. Standards that required these technologies could strain the engineering resources of these small manufacturers if they chose to maintain a vertically integrated business model.

Small distribution transformer manufacturers can also be at a disadvantage due to their lack of purchasing power for high performance materials. If more expensive steels are needed to meet standards and steel cost grows as a percentage of the overall product cost, small manufacturers who pay higher per pound prices would be disproportionately impacted.

Last, small manufacturers typically have less access to capital, which may be needed by some to cover the conversion costs associated with new technologies.

4. Description and Estimate of Compliance Requirements

a. Liquid-Immersed

Based on interviews with manufacturers in the liquid-immersed market, DOE does not believe small manufacturers will face significant capital conversion costs at the levels established in today's rulemaking. DOE expects small manufacturers of liquid-immersed distribution transformers to continue to produce silicon steel cores, rather than invest in amorphous technology. While silicon steel designs capable of achieving TSL 1 would get larger, and thus reduce throughput, most manufacturers said the industry in general has substantial excess capacity due to the recent economic downturn. Therefore, DOE believes TSL 1 would not require the typical small manufacturer to invest in additional capital equipment. However, small manufacturers may incur some engineering and product design costs associated with re-optimizing their production processes around new baseline equipment. DOE estimates TSL 1 would require industry product conversion costs of only one-half of one year's annual industry R&D expenses. Because these one-time costs are relatively fixed per manufacturer, they impact smaller manufacturers disproportionately (compared to larger manufacturers). The table below illustrates this effect:

TABLE VI.1—ESTIMATED PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL R&D EXPENSE

	Product conversion cost	Product conversion cost as a percentage of annual R&D expense
Typical Large Manufacturer	$1.34 M	20
Typical Small Manufacturer	1.34 M	222

While the costs disproportionately impact small manufactures, the standard levels, as stated above, do not require small manufacturers to invest in entirely different production processes nor do they require steels or core construction techniques with which these manufacturers are not familiar. A range of design options would still be available.

b. Low-Voltage Dry-Type.

Small manufacturers have several options available to them at TSL2 based on individual economic determinations. They may choose to: (1) Source their cores, (2) fabricate cores with butt-lapping technology and higher-grade steel, (3) buy a mitering machine (enabling them to build mitered cores with lower-grade steel than would be otherwise required), or (4) exit a product line.

Compared to higher TSLs, TSL 2 provides many more design paths for small manufacturers to comply. DOE's engineering analysis indicates that the efficiency level represented by TSL 2 for DL7 (the high-volume line) could be met without mitering through the use of butt-lapping higher-grade steels. It is uncertain whether small manufacturers would elect to butt-lap with higher grade steel rather than source their cores or invest in mitering equipment, but each option remains a viable path to compliance. With respect to the other paths to compliance, DOE notes that roughly half of the small business LVDT manufacturers DOE interviewed already have mitering capability. DOE estimates half of all cores in small business DL7 transformers are currently sourced, according to transformer and core manufacturer interviews, as third-party core manufacturers already often have significant variable cost advantages through bulk steel purchasing power and greater production efficiencies due to higher volumes.

Each business' ultimate decision on how it will ultimately comply depends on its production volumes, the relative steel prices it faces, its position in the value chain, and whether it currently has mitering technology in-house, among other factors. Because a small business may ultimately make the business decision to build mitered cores at TSL 2, DOE estimates the cost of such a strategy to conservatively bound the compliance impact. Below DOE compares the relative impact on a small business of the scenario in which a small manufacturer elects to purchase a new mitering machine (rather than continue to butt-lap with higher grade steel or source its core production). Based on interviews with small businesses and core manufacturers, DOE believes this to be a conservative assessment of compliance costs, as many small businesses currently source a large share of their cores. DOE estimates capital conversion costs of $0.75 million and product conversion costs of $0.2 million, based on manufacturer and equipment supplier interviews, would be incurred if small businesses without mitering equipment chose to invest in it. Because of the largely fixed nature of these one-time conversion expenditures that distribution transformer manufacturers would incur as a result of standards, small manufacturers who choose to invest in in-house mitering capability will likely be disproportionately impacted (compared to large manufacturers). Based on information gathered in interviews, DOE estimates that three small manufacturers would invest in mitering equipment as result of this rule. As Table VI.2 indicates, small manufacturers face a greater relative hurdle in complying with standards should they opt to continue to maintain core production in-house.

TABLE VI.2—ESTIMATED CAPITAL AND PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL CAPITAL EXPENDITURES AND R&D EXPENSE

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual EBIT
Large Manufacturer	37	10	15
Small Manufacturer	137	44	70

For more than half of the small businesses DOE interviewed, it is already standard practice to source a large percentage of their DOE-covered cores on an ongoing basis or quickly do so when steel prices merit such a strategy. Furthermore, small businesses are currently more likely to source cores for NEMA Premium® units than standard units. Many small businesses indicated that they expect the continuance of this strategy would be the low-cost option under higher standards. Therefore, the impacts in the table are not representative of the strategy DOE expects to be employed by many small manufacturers, but only those choosing to invest in mitering equipment.

For all of the reasons discussed, DOE believes the capital expenditures it estimated above for small businesses are likely conservative and that small businesses have a variety of technical and strategic paths to continue to compete in the market at TSL 2.

c. Medium-Voltage Dry-Type

Based on its engineering analysis and interviews, DOE expects relatively minor capital expenditures for the industry to meet TSL 2. DOE understands that the market is already standardized on step-lap mitering, so manufacturers will not need to make major investments for more advanced core construction. Furthermore, TSL 2 does not require a change to much thinner steels such as M3 or H0. The industry can use M4 and H1, thicker steels with which it has much more experience and which are easier to employ in the stacked-core production process that dominates the medium-voltage market. However, some investment will be required to maintain capacity as some manufacturers will likely migrate towards more M4 and H1 steel and away from the slightly thicker M5, which is also common. Additionally, design options at TSL 2 typically have larger cores, also slowing throughput. Therefore, some manufacturers may need to invest in additional production equipment. Alternatively, depending on each company's availability capacity, manufacturers could employ additional production shifts, rather than invest in additional capacity.

For the medium-voltage dry-type market, at TSL 2, the level proposed in today's notice, DOE estimates low capital and product conversion costs that are relatively fixed for both small and large manufacturers. Similar to the low-voltage dry-type market, small manufacturers will likely be disproportionately impacted compared to large manufacturers due to the fixed nature of the conversion expenditures. Table VI.3 illustrates the relative impacts on small and large manufacturers.

TABLE VI.3—ESTIMATED CAPITAL AND PRODUCT CONVERSION COSTS AS A PERCENTAGE OF ANNUAL CAPITAL EXPENDITURES AND R&D EXPENSE

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual EBIT
Large Manufacturer	3	9	8
Small Manufacturer	40	117	98

d. Summary of Compliance Impacts

The compliance impacts on small businesses are discussed above for low-voltage dry-type, medium-voltage dry-type, and liquid-filled distribution transformer manufacturers. Although the conversion costs required can be considered substantial for both large and small companies, the impacts could be relatively greater for a typical small manufacturer because of much lower production volumes and the relatively fixed nature of the R&D and capital investments required.

5. Steps Taken to Minimize Impacts on Small Entities and Reasons Why Other Significant Alternatives to Today's Final Rule Were Rejected

DOE modified the standards established in today's final rule from those proposed in the February 2012 NOPR as discussed previously and based on comments and additional test data received from interested parties.

The previous discussion also analyzes impacts on small businesses that would result from the other TSLs DOE considered. Though TSLs lower than the adopted TSL are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Thus, DOE rejected the lower TSLs.

In addition to the other TSLs being considered, the TSD includes a regulatory impact analysis (chapter 17) that discusses the following policy alternatives: (1) No standard, (2) consumer rebates, (3) consumer tax credits, (4) manufacturer tax credits, and (5) early replacement. DOE does not intend to consider these alternatives further because they are either not feasible to implement, or not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration. Thus, DOE rejected these alternatives and is adopting the standards set forth in this rulemaking.

6. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being finalized today.

7. Significant Alternatives to Today's Rule

The discussion above analyzes impacts on small businesses that would result from the other TSLs DOE considered. Though TSLs lower than the selected TSLs are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Therefore, DOE rejected the lower TSLs.

In addition to the other TSLs being considered, the TSD includes a regulatory impact analysis (chapter 17) that discusses the following policy alternatives: (1) Consumer rebates, (2) consumer tax credits, and (3) manufacturer tax credits. DOE does not intend to consider these alternatives further because they either are not feasible to implement or are not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

8. Significant Issues Raised by Public Comments

DOE's MIA suggests that, while TSL1, TSL1, and TSL 2 present greater difficulties for small businesses than lower levels in the liquid-immersed, LVDT, and MVDT classes, respectively, the impacts at higher TSLs would be greater. DOE expects that small businesses will generally be able to profitably compete at the TSL selected in today's rulemaking. DOE's MIA is based on its interviews of both small and large manufacturers, and consideration of small business impacts explicitly enters into DOE's choice of the TSLs selected in this final rule.

DOE also notes that today's standards can be met with a variety of materials, including multiple core steels and both copper and aluminum windings. Because today's TSLs can be met with a variety of materials, DOE does not expect that material availability issues will be a problem for the industry that results from this rulemaking.

9. Steps DOE Has Taken to Minimize the Economic Impact on Small Manufacturers

In consideration of the benefits and burdens of standards, including the burdens posed to small manufacturers, DOE concluded that TSL1 is the highest level that can be justified for liquid-immersed and medium-voltage dry-type transformers and TSL2 is the highest level that can be justified for low-voltage dry-type transformers. As explained in part 6 of the IRFA, ''Significant Alternatives to the Rule,'' DOE explicitly considered the impacts on small manufacturers of liquid-immersed and dry-type transformers in selecting the TSLs in today's rulemaking, rather than selecting a higher trial standard level. It is DOE's belief that levels at TSL3 or higher would place excessive burdens on small manufacturers of medium-voltage dry-type transformers, as would TSL 2 or higher for liquid-immersed and medium-voltage dry-type transformers. Such burdens would include large product redesign costs and also operational problems associated with the extremely thin laminations of core steel that would be needed to meet these levels and advanced core construction equipment and tooling for mitering, or wound-core designs. Similarly, for medium-voltage dry-type, the steels and construction techniques likely to be used at TSL 2 are already commonplace in the market, whereas TSL 3 would likely trigger a more dramatic shift to thinner and more exotic steels, to which many small businesses have limited access. Lastly, DOE is confident that TSL1 for the liquid-immersed distribution transformer market would not require small manufacturers to invest in amorphous steel technology, which could put them at a significant disadvantage.

Section VI.B discusses how small business impacts entered into DOE's selection of today's standards for distribution transformers. DOE made its decision regarding standards by beginning with the highest level considered and successively eliminating TSLs until it found a TSL that is both technologically feasible and economically justified, taking into account other EPCA criteria. Because DOE believes that the TSLs selected are economically justified (including consideration of small business impacts), the reduced impact on small businesses that would have been realized in moving to lower efficiency levels was not considered in DOE's decision (but the reduced impact on small businesses that is realized in moving down to TSL2 from TSL3 (in the case of medium-voltage dry-type and low-voltage dry-type) and to TSL1 from TSL2 (in the case of liquid-immersed) was explicitly considered in the weighing of benefits and burdens).

C. Review Under the Paperwork Reduction Act

Manufacturers of distribution transformers must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for distribution transformers, 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 distribution transformers. (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 the 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 rule is available at *http://cxnepa.energy.gov/* or link directly to *http://energy.gov/nepa/downloads/cx-007852-categorical-exclusion-determination*.

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 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 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. Pub. L. 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 *http://energy.gov/gc/office-general-counsel*.

DOE has concluded that this final rule would likely require expenditures of $100 million or more by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by distribution transformer manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency distribution transformers, 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 final rule and the ''Regulatory Impact Analysis'' section of the TSD for this 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 (o), 6316(a), and 6317(a)(1), today's final rule would establish energy conservation standards for distribution transformers 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'' chapter of the TSD for today's 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 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

List of Subjects in 10 CFR Part 431

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

Issued in Washington, DC, on April 9, 2013.

David Danielson,

Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 431 of chapter II, of title 10 of the Code of Federal Regulations, to read as set forth below:

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

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

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.192 is amended by:

■ a. Removing the definition of ''underground mining distribution transformer'' and

■ b. Adding in alphabetical order, the definition for ''mining distribution transformer'' to read as follows:

§ 431.192 Definitions.

* * * * *

Mining distribution transformer means a medium-voltage dry-type distribution transformer that is built only for installation in an underground mine or surface mine, inside equipment for use in an underground mine or surface mine, on-board equipment for use in an underground mine or surface mine, or for equipment used for digging, drilling, or tunneling underground or above ground, and that has a nameplate which identifies the transformer as being for this use only.

* * * * *

■ 3. Section 431.196 is revised to read as follows:

§ 431.196 Energy conservation standards and their effective dates.

(a) *Low-Voltage Dry-Type Distribution Transformers.* (1) The efficiency of a low-voltage, dry-type distribution transformer manufactured on or after January 1, 2007, but before January 1, 2016, shall be no less than that required for the applicable kVA rating in the table below. Low-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	%	kVA	%
15	97.7	15	97.0

Single-phase		Three-phase	
kVA	%	kVA	%
25	98.0	30	97.5
37.5	98.2	45	97.7
50	98.3	75	98.0
75	98.5	112.5	98.2
100	98.6	150	98.3
167	98.7	225	98.5
250	98.8	300	98.6
333	98.9	500	98.7
		750	98.8
		1000	98.9

Note: All efficiency values are at 35 percent of nameplate-rated load, determined according to the DOE Test Method for Measuring the Energy Consumption of Distribution Transformers under Appendix A to Subpart K of 10 CFR part 431.

(2) The efficiency of a low-voltage dry-type distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA rating in the table below. Low-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
15	97.70	15	97.89
25	98.00	30	98.23
37.5	98.20	45	98.40
50	98.30	75	98.60
75	98.50	112.5	98.74
100	98.60	150	98.83
167	98.70	225	98.94
250	98.80	300	99.02
333	98.90	500	99.14
		750	99.23
		1000	99.28

Note: All efficiency values are at 35 percent of nameplate-rated load, determined according to the DOE Test Method for Measuring the Energy Consumption of Distribution Transformers under Appendix A to Subpart K of 10 CFR part 431.

(b) *Liquid-Immersed Distribution Transformers.* (1) The efficiency of a liquid-immersed distribution transformer manufactured on or after January 1, 2010, but before January 1, 2016, shall be no less than that required for their kVA rating in the table below. Liquid-immersed distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
10	98.62	15	98.36
15	98.76	30	98.62
25	98.91	45	98.76
37.5	99.01	75	98.91
50	99.08	112.5	99.01
75	99.17	150	99.08
100	99.23	225	99.17
167	99.25	300	99.23
250	99.32	500	99.25
333	99.36	750	99.32
500	99.42	1000	99.36
667	99.46	1500	99.42
833	99.49	2000	99.46
		2500	99.49

Note: All efficiency values are at 50 percent of nameplate-rated load, determined according to the DOE Test—Procedure, Appendix A to Subpart K of 10 CFR part 431.

(2) The efficiency of a liquid-immersed distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA rating in the table below. Liquid-immersed distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
10	98.70	15	98.65
15	98.82	30	98.83
25	98.95	45	98.92
37.5	99.05	75	99.03
50	99.11	112.5	99.11
75	99.19	150	99.16
100	99.25	225	99.23
167	99.33	300	99.27
250	99.39	500	99.35
333	99.43	750	99.40
500	99.49	1000	99.43
667	99.52	1500	99.48
833	99.55	2000	99.51
		2500	99.53

Note: All efficiency values are at 50 percent of nameplate-rated load, determined according to the DOE Test Method for Measuring the Energy Consumption of Distribution Transformers under Appendix A to Subpart K of 10 CFR part 431.

(c) *Medium-Voltage Dry-Type Distribution Transformers.* (1) The efficiency of a medium-voltage dry-type distribution transformer manufactured on or after January 1, 2010, but before January 1, 2016, shall be no less than that required for their kVA and BIL rating in the table below. Medium-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase				Three-phase			
kVA	BIL*			kVA	BIL		
	20–45 kV	46–95 kV	≥96 kV		20–45 kV	46–95 kV	≥96 kV
	Efficiency (%)	Efficiency (%)	Efficiency (%)		Efficiency (%)	Efficiency (%)	Efficiency (%)
15	98.10	97.86		15	97.50	97.18	
25	98.33	98.12		30	97.90	97.63	
37.5	98.49	98.30		45	98.10	97.86	
50	98.60	98.42		75	98.33	98.12	
75	98.73	98.57	98.53	112.5	98.49	98.30	
100	98.82	98.67	98.63	150	98.60	98.42	
167	98.96	98.83	98.80	225	98.73	98.57	98.53
250	99.07	98.95	98.91	300	98.82	98.67	98.63
333	99.14	99.03	98.99	500	98.96	98.83	98.80
500	99.22	99.12	99.09	750	99.07	98.95	98.91
667	99.27	99.18	99.15	1000	99.14	99.03	98.99
833	99.31	99.23	99.20	1500	99.22	99.12	99.09
				2000	99.27	99.18	99.15
				2500	99.31	99.23	99.20

* BIL means basic impulse insulation level.

Note: All efficiency values are at 50 percent of nameplate rated load, determined according to the DOE Test Method for Measuring the Energy Consumption of Distribution Transformers under Appendix A to Subpart K of 10 CFR part 431.

(2) The efficiency of a medium-voltage dry-type distribution transformer manufactured on or after January 1, 2016, shall be no less than that required for their kVA and BIL rating in the table below. Medium-voltage dry-type distribution transformers with kVA ratings not appearing in the table shall have their minimum efficiency level determined by linear interpolation of the kVA and efficiency values immediately above and below that kVA rating.

Single-phase				Three-phase			
kVA	BIL*			kVA	BIL		
	20–45 kV	46–95 kV	≥96 kV		20–45 kV	46–95 kV	≥96 kV
	Efficiency (%)	Efficiency (%)	Efficiency (%)		Efficiency (%)	Efficiency (%)	Efficiency (%)
15	98.10	97.86	....	15	97.50	97.18	....
25	98.33	98.12	....	30	97.90	97.63	....
37.5	98.49	98.30	....	45	98.10	97.86	....
50	98.60	98.42	....	75	98.33	98.13	....
75	98.73	98.57	98.53	112.5	98.52	98.36	....
100	98.82	98.67	98.63	150	98.65	98.51	....
167	98.96	98.83	98.80	225	98.82	98.69	98.57
250	99.07	98.95	98.91	300	98.93	98.81	98.69
333	99.14	99.03	98.99	500	99.09	98.99	98.89
500	99.22	99.12	99.09	750	99.21	99.12	99.02
667	99.27	99.18	99.15	1000	99.28	99.20	99.11
833	99.31	99.23	99.20	1500	99.37	99.30	99.21
				2000	99.43	99.36	99.28
				2500	99.47	99.41	99.33

* BIL means basic impulse insulation level.

Note: All efficiency values are at 50 percent of nameplate rated load, determined according to the DOE Test Method for Measuring the Energy Consumption of Distribution Transformers under Appendix A to Subpart K of 10 CFR part 431.

(d) *Mining Distribution Transformers.* [Reserved]

Appendix

Note: The following letter from the Department of Justice will not appear in the Code of Federal Regulations.

U.S. Department of Justice
Antitrust Division
Joseph F. Wayland
Acting Assistant Attorney General
RFK Main Justice Building
950 Pennsylvania Ave., NW
Washington, D.C. 20530–0001
(202)514–2401/(202)616–2645 (Fax)

September 24, 2012

Eric J. Fygi
Deputy General Counsel
Department of Energy
Washington, DC 20585

Dear Deputy General Counsel Fygi:

I am responding to your August 16, 2012 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for certain types of distribution transformers, namely medium-voltage, dry-type and liquid-immersed distribution transformers, as well as low-voltage, dry-type distribution transformers. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers, and perhaps thwart the intent of the revised standards by inducing substitution to less efficient products.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (77 Fed. Reg. 7282, February 10, 2012) (NOPR). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. The NOPR proposed Trial Standard Level 2 for medium-voltage, dry-type distribution transformers, which was arrived at through a consensus agreement among a diverse array of stakeholders as part of a negotiated rulemaking, and Trial Standard Level 1 for medium-voltage, liquid-immersed and low-voltage, dry-type distribution transformers, after no consensus was reached as part of a negotiated rulemaking. Our review has focused on the standards DOE has proposed adopting. We have not determined the impact on competition of more stringent standards than those proposed in the NOPR.

Based on this review, our conclusion is that the proposed energy conservation standards for medium-voltage, dry-type and liquid-immersed distribution transformers, as well as low-voltage, dry-type distribution transformers, are unlikely to have a significant adverse impact on competition. In reaching our conclusion, we note that the proposed energy standards for medium-voltage, dry-type distribution transformers were arrived at through a consensus agreement among a diverse array of stakeholders.

Sincerely,

Joseph F. Wayland

[FR Doc. 2013–08712 Filed 4–17–13; 8:45 am]

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Part III

Farm Credit Administration

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Liquidity and Funding; Final Rule

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC54

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Liquidity and Funding

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we or us) adopts a final rule that amends its liquidity regulation. The purpose of the final rule is to strengthen liquidity risk management at Farm Credit System (FCS, Farm Credit, or System) banks, improve the quality of assets in their liquidity reserves, and bolster the ability of System banks to fund their obligations and continue operations during times of economic, financial, or market adversity.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
David Lewandrowski, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA, (703) 883–4498, TTY (703) 883–4056; or
Richard A. Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the final rule are to:

• Improve the capacity of FCS banks to pay their obligations and fund their operations by maintaining adequate liquidity to withstand various market disruptions and adverse economic or financial conditions;

• Strengthen liquidity management at all FCS banks;

• Enhance the liquidity of assets that System banks hold in their liquidity reserves;

• Require FCS banks to maintain a three-tiered liquidity reserve. The first tier of the liquidity reserve must consist of a sufficient amount of cash and cash-like instruments to cover each bank's financial obligations for 15 days. The second and third tiers of the liquidity reserve must contain cash and highly liquid instruments that are sufficient to cover the bank's obligations for the next 15 and subsequent 60 days, respectively;

• Establish a supplemental liquidity buffer that a bank can draw upon during an emergency and is sufficient to cover the bank's liquidity needs beyond 90 days; and

• Strengthen each bank's Contingency Funding Plan (CFP).

II. Background

The FCS is a nationwide network of borrower-owned financial cooperatives that lend to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, rural utilities, farm-related service businesses, and rural homeowners. Its primary purpose is to furnish ''sound, adequate, and constructive credit and closely related services'' necessary for efficient agricultural operations in the United States.[1] By law, FCS institutions are instrumentalities of the United States,[2] and Government-sponsored enterprises (GSEs).[3]

FCS banks issue Systemwide debt securities, which are the primary source of funding System loans to farmers, ranchers, cooperatives, and other eligible borrowers.[4] The System depends on continuing access to the debt markets in order to finance agriculture, rural utilities, and rural housing in both good and bad economic times. If access to the debt markets becomes impeded for any reason, Farm Credit banks must have enough readily available funds and assets that can be quickly converted into cash to continue operations and pay maturing obligations. In contrast to non-System financial institutions, the FCS does not have an assured governmental lender of last resort that it could turn to in an emergency.[5] As a result, FCS banks must rely on their liquidity reserves more heavily than other federally regulated lending institutions if market access is impeded.[6]

III. History of This Rule

We have periodically amended our liquidity rule over the past 19 years as part of our ongoing efforts to limit the adverse effect that changing economic, financial, or market conditions have on the liquidity of FCS banks.[7] On December 27, 2011, the FCA published a proposed rule in the **Federal Register** to amend its liquidity regulation at § 615.5134.[8] The FCA proposed this rule after it identified vulnerabilities that could impair the ability of FCS banks to pay their obligations, fund their assets, and continue operations whenever economic or financial turmoil impedes System access to the debt markets. The purpose of this rulemaking is to improve the System's ability to withstand market disruptions by strengthening liquidity management practices at Farm Credit banks and enhancing the liquidity of assets in their liquidity reserves. Proposed § 615.5134 would:

(1) Require FCS banks to manage their liquidity reserves primarily as an emergency source of funding;

(2) Require boards to adopt stronger and more focused policies concerning liquidity management and the contingency funding plan;

(3) Divide the 90-day liquidity reserve into tiers so each FCS bank has a sufficient amount of cash and cash-like instruments available to pay its obligations and fund its operations for the next 15 days, and maintain a pool of cash or highly liquid instruments for the subsequent 15 days and the 60 days after that;

(4) Require each FCS bank to establish and maintain a supplemental liquidity buffer that would provide a longer term, stable source of funding beyond the 90-day minimum liquidity reserve; and

(5) Specify corrective actions that the FCA could compel FCS banks to

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[1] *See* Section 1.1(a) of the Act; 12 U.S.C. 2001(a).

[2] *See* Sections 1.3(a), 2.0(a), 2.10(a), 3.0, 4.25, and 8.1(a)(1) of the Act; 12 U.S.C. 2011(a), 2071(a), 2091(a), 2121, 2211, and 2279aa–1.

[3] Pub. L. 101–73, § 1404(e)(1)(A), 103 Stat. 183, 552–53, (Aug. 9, 1989).

[4] Farm Credit banks (which are the three Farm Credit Banks and the Agricultural Credit Bank) issue and market Systemwide debt securities through the Federal Farm Credit Banks Funding Corporation (Funding Corporation). The Funding Corporation, which is established pursuant to section 4.9 of the Act, is owned by all Farm Credit banks.

[5] The Federal Reserve Banks, the Federal Home Loan Banks, and National Credit Union Administration Central Liquidity Facility serve as a source of liquidity for commercial banks, savings associations, and credit unions both in ordinary times and during emergencies.

[6] Section 1101 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 13(3) of the Federal Reserve Act, 12 U.S.C. 343(3), to allow the Board of Governors of the Federal Reserve System, in consultation with the Secretary of the Treasury, to establish by regulation, policies and procedures that would govern emergency lending under a program or facility for the purpose of providing liquidity to the financial system. Under section 13(3) of the Federal Reserve Act, as amended, the Board of Governors of the Federal Reserve System must establish procedures that prohibit insolvent and failing entities from borrowing under the emergency program or facility. Pursuant to section 13(3) of the Federal Reserve Act, as amended, the Board of Governors of the Federal Reserve System, with the approval of the Secretary of the Treasury could authorize the Federal Reserve Banks to serve as an emergency source of liquidity for the FCS, but it is not obligated to do so. *See* Public Law 111–203, title XI, § 1101(a), 124 Stat. 1376, 2113 (Jul. 21, 2010).

[7] *See* 58 FR 63056 (Nov. 30, 1993); 64 FR 28896 (May 28, 1999); 70 FR 51590 (Aug. 31, 2005).

[8] *See* 76 FR 80817 (Dec. 27, 2011).

implement under a reservation of authority.

IV. Comment Letters

The four System banks and the Farm Credit Council (Council) commented on the proposed rule. All five commenters acknowledge sound liquidity management enables the FCS to fulfill its statutory mandate to fund agriculture. As the FCA noted in the preamble to the proposed rule, the commenters emphasized that all FCS banks withstood the financial crisis of 2008 with their liquidity intact. The commenters attribute this success to effective liquidity management at FCS banks and the current regulatory framework, which they deem to be appropriate. For this reason, the commenters suggest that the FCA should make only minor adjustments to the existing liquidity regulation, § 615.5134, rather than comprehensive revisions. In this context, all commenters expressed the view that the proposed rule is excessive, complex, and overly prescriptive.

The commenters also claim that the FCA's proposal would result in undue regulatory burden on System banks because it goes far beyond what they believe is necessary for effective liquidity risk management. The commenters raised a number of substantive issues about the proposed liquidity rule, and they recommended specific revisions for the final rule. The main areas of concern that the commenters raised are:

- The proper roles of both board and management in devising and implementing liquidity policies for the bank;
- The extent to which FCS banks should distinguish or segregate investments held for liquidity management from investments held for other purposes;
- The role of short-term discount notes in the funding strategies of Farm Credit banks;
- The extent to which guidance from the Basel Committee on Banking Supervision (Basel Committee) and the Federal banking regulators [9] about liquidity at depository institutions should influence the FCA's efforts to develop liquidity regulations for FCS banks;
- The lack of a lender of last resort for FCS banks;
- GSE status and the extent to which Farm Credit banks should generate earnings from their investments; and
- Development of a consistent regulatory approach for liquidity at both FCS banks and the Federal Agricultural Mortgage Corporation (Farmer Mac).

V. The FCA's Approach in the Final Rule

The commenters have not persuaded the FCA that the proposed rule is unduly burdensome or overly prescriptive, or that only minor adjustments to the existing liquidity regulation are warranted. Recent financial crises and continuing global economic uncertainty clearly demonstrate that strong liquidity management practices and access to reliable sources of emergency funding are crucial both to the viability of each financial institution, including FCS banks, and to the financial system as a whole. We proposed substantial revisions to § 615.5134 in order to redress vulnerabilities in liquidity management that we identified at System banks in the aftermath of the 2008 crisis.[10] The purposes of this rulemaking are to strengthen the System's ability to withstand future crises by limiting the adverse effects that sudden changes in economic, financial and market conditions may have on the liquidity of FCS banks, both individually and collectively. For these reasons, both the proposed and final rules follow the same basic supervisory and regulatory approaches to liquidity.

The commenters offered many constructive and practical suggestions for improving the regulation that we incorporated into the final rule. Based on these comments, we restructured and refined the rule to make it easier to read, understand, and implement. Additionally, the comments caused us to reconsider and revise some of our positions. As we explain the final rule and how it differs from our original proposal, we will respond to comments about our overall regulatory and supervisory approach to liquidity as well as specific issues arising from each provision of § 615.5134.

A. Reasons for Revising the Liquidity Regulation

Liquidity refers to the ability of financial institutions to pay obligations and fund operations on an ongoing basis at a reasonable cost. Recent financial crises demonstrate how quickly liquidity can vanish at seemingly strong financial institutions, which could impair their viability and jeopardize their survival. If economic or financial conditions quickly or unexpectedly deteriorate, financial institutions may find that their routine funding sources have become too scarce or costly, and that they then do not have sufficient liquid assets to meet their immediate funding needs. This lack of adequate liquidity can threaten the safety and soundness of individual institutions, and the financial system as a whole.

The FCA noted in the preamble to the proposed rule that throughout the 2008 crisis, FCS banks were able to raise funds and pay their obligations in a timely manner. However, the FCA and System commenters drew very different conclusions from the 2008 crisis, especially concerning whether FCS banks need to strengthen both their liquidity reserves and their liquidity risk management practices so they are in the best position possible to weather future financial and economic storms. The FCA identified several vulnerabilities at FCS banks that could adversely affect their liquidity during economic, financial, or market turmoil in the future. For this reason, the FCA proposed to correct these potential weaknesses by proposing substantial revisions to § 615.5134.

In contrast, FCS commenters concluded that the crisis in 2008 vindicated the existing liquidity regulation. Three commenters attribute effective risk management practices under the existing regulatory framework as the reason why System banks had adequate liquidity to continue operations without disruptions throughout the 2008 crisis. Additionally, these commenters point out that System banks, on their own initiative, implemented various measures to improve their liquidity management practices so they could continue their operations unabated whenever financial markets became distressed. For example, FCS banks refined the liquidity standards and measures in the Contractual Interbank Performance Agreement (CIPA).[11] The

[9] The Federal banking agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration. Prior to July 2011, the former Office of Thrift Supervision jointly issued guidance about liquidity with the other four banking agencies. Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act abolished the Office of Thrift Supervision and transferred its authorities over: (1) Savings and loan holding companies to the Board of Governors of the Federal Reserve System; (2) Federal savings associations to the Office of the Comptroller of the Currency; and (3) State savings associations to the Federal Deposit Insurance Corporation. *See* Public Law 111–203, Title III, § 312, 124 Stat. 1376, 1521 (Jul. 21, 2010).

[10] *See* 76 FR 80817 *supra.* at 80819.

[11] Under provisions of the CIPA, a CIPA score is a calculation that measures the financial condition and performance of each FCS bank. The calculation uses various ratios that take into account the

Continued

banks also voluntarily adopted an additional three-tiered liquidity standard that they implemented through their policies and procedures. One commenter noted that the System adopted other strategies to enhance liquidity, such as adjusting debt maturities and loan pricing, and increasing the amount of highly liquid assets (cash and Treasuries) in their liquidity portfolios. For these reasons, the commenters encouraged the FCA to ''only make minor adjustments to existing regulatory requirements rather than comprehensive revisions.''

Although FCS banks survived the 2008 crisis with their liquidity intact under the existing regulatory framework, the FCA observes that it is not necessarily an adequate or effective bulwark against future market disruptions that would most likely occur under different circumstances. In 2008, the agricultural economy was strong and the System was sound when the housing bubble burst, causing a financial crisis that imperiled the liquidity of the global financial system. In these circumstances, FCS banks were able to continue issuing debt (overwhelmingly short-term discount notes) to investors, who remained confident in the System's ability to meet its obligations, but even then, most investors were only willing to buy very short-term instruments.

In other plausible scenarios, however, distress in the agriculture sector could reduce the income of FCS banks and associations, thus making it more difficult for affected System institutions to pay their debts and fund their operations. As a result, the System's funding costs could rise as investor confidence becomes shaken, and market access could become partially or fully impeded. One or more of the following events could impair the liquidity of System banks:

- A steep drop in commodity prices that adversely affects the repayment capacity of a large percentage of FCS borrowers, thereby reducing the ability of System banks to repay their obligations and fund their operations;
- Extended declines in both commodity prices and agricultural land values would result in significant loan losses at FCS banks and associations, thereby impairing System capital and impeding market access;
- A sudden surge in borrower demand for funds under lines of credit that strains the bank's ability to meet these unfunded commitments at a time of market stress; or
- A large amount of System obligations become due and payable as a severe market disruption is reaching its peak.

Any of these events could impair the viability of one or more FCS banks, thereby constricting the System's capacity to fund its normal operations. Substantially revising and strengthening § 615.5134 mitigates the System's vulnerabilities to such risks, and thereby improves the System's ability to withstand market disruptions in a wide range of circumstances.

The FCA supports the measures that System banks implemented to strengthen liquidity. In our view, the System's efforts and our new regulation complement each other. For example, revised § 615.5134 divides the liquidity reserve into tiers that are similar to the tiers that FCS banks have already established. Additionally, the regulation reinforces enhanced practices at FCS banks to hold more cash and highly liquid investments in amounts sufficient to cover obligations maturing in the next 15, 30, and 90 days.

The rule also strengthens internal controls and risk management practices at System banks. Under the revised regulation, System banks will retain ample flexibility to manage liquidity effectively in future crises, and adjust their strategies to changing circumstances. The new regulation enables FCS banks to further refine CIPA, or make adjustments to debt maturities or investments, as circumstances warrant. As amended, § 615.5134 promotes comprehensive and sound liquidity management at FCS banks. For this reason, our new regulation aids, rather than hinders System banks as they combat liquidity risks in an ever-changing environment.

B. Comparisons and Contrasts With Guidance of Other Regulators

The preamble to the proposed rule frequently referred to guidance that international and Federal regulators developed to enhance liquidity management practices at the financial institutions they regulate. In September 2008, the Basel Committee issued the *Principles for Sound Liquidity Risk Management and Supervision,* which contained 17 core principles detailing international supervisory guidance for sound liquidity risk management. In December, 2010, the Basel Committee issued *Basel III: International framework for liquidity risk measurement, standards, and monitoring (Basel III).* The Federal banking agencies published their Interagency Policy Statement on Funding and Liquidity Risk Management on March 22, 2010, which sets forth the supervisory expectations for depository institutions and their related entities.[12]

We received several comments about the extent to which Basel III and the approach of other regulators influences our new liquidity regulation. System commenters expressed conflicting opinions on this issue. One bank opined that the proposed rule is ''too detailed and prescriptive compared to the principles-based approach'' of other bank regulators. In contrast, two commenters applauded the FCA's efforts to create regulatory requirements for liquidity that are similar to the approach of the Basel Committee and the Federal banking agencies, when it is appropriate to do so. However, they cautioned the FCA not to ''get ahead of these regulators with respect to their consideration and implementation of Basel III.'' A commenter expressed concern that our proposed rule was significantly more onerous than the liquidity requirements imposed on commercial banks.

Our new regulation incorporates many of the principles that the Basel Committee and the Federal banking agencies have articulated on liquidity management because many of these fundamental concepts apply to all financial institutions, including FCS banks and depository institutions. The comprehensive supervisory approach developed by the Basel Committee and the Federal banking agencies effectively strengthens both the liquidity reserves and the liquidity risk management practices at regulated financial institutions. The most important features of the framework of other regulators that we adopted pertain to: (1) A multi-tiered approach to the liquidity reserve that requires FCS banks to keep a sufficient amount of cash and highly liquid investments on hand to pay obligations that fall due in next 15, 30, and 90 days; (2) a supplemental liquidity buffer that provides FCS banks with a stable source of liquidity over a longer period of time; (3) specific policies and internal controls that combat liquidity risk; and (4) contingency funding planning based in part on the results of liquidity stress tests.

This principles-based approach is comprehensive, yet flexible because it applies to all types of financial

capital, asset quality, earnings, interest-rate risk and liquidity of each Farm Credit bank. The CIPA score is compared to an agreed-upon standard of financial condition and performance that each FCS bank must achieve and maintain. The CIPA score is designed as an early warning mechanism that helps monitor the financial condition of each FCS bank.

[12] *See* 75 FR 13656 (Mar. 22, 2010).

institutions, regardless of size, structure, or complexity. This approach is also suitable to FCS banks, both collectively and individually. These principles enhance liquidity throughout the FCS while accommodating differences among System banks in size, business models, and complexity of operations.

As the preamble to the proposed rule explains, and some commenters acknowledge, we tailored these principles and concepts to the System's unique structure and circumstances. Accordingly, we modified the supervisory approach of the Basel Committee and the Federal banking agencies to apply it to the System. As noted above, the FCS is a nationwide network of borrower-owned financial cooperatives that primarily lend to agricultural enterprises in rural areas. Other fundamental differences between the System and depository institutions are: (1) FCS institutions are instrumentalities of the United States and GSEs; (2) their common equity is not publicly traded; (3) the issuance of Systemwide debt securities is the primary source of System funding; and (4) the System has no assured governmental lender of last resort. Generally, the funding sources, asset portfolios, and investment activities of regulated non-System financial institutions are more diversified and complex than those of the FCS. We took all of these factors into account as we developed this new liquidity regulation to meet the unique structure, needs, and circumstances of FCS institutions, and threats they face. Thus, our revised liquidity regulation diverges from the approach of the Basel Committee and the Federal banking agencies when circumstances warrant it.[13]

The commenters asked the FCA not to get ahead of the other regulators in implementing the concepts of Basel III. This request seems to reflect System concerns that our new liquidity regulation will become effective before Basel III.[14] From a supervisory and regulatory prospective, delaying the implementation of this regulation until Basel III is fully phased in is not in the System's best interest because amended § 615.5134 strengthens liquidity at FCS banks and helps protect them from future market upheavals. Although no one can predict when the next market disruption will occur, System banks will be better prepared for it after they make the changes required by this new regulation.

Basel III is not the only basis for the new liquidity regulation. The revised regulation also builds upon the System's own initiatives to improve liquidity management as well as the FCA's experiences from examining liquidity risk management at Farm Credit banks and the Funding Corporation. In this context, the new regulation implements the best practices for liquidity management at FCS banks, and there is no reason for the FCA to delay implementation until Basel III is fully implemented at other financial institutions. Of course, the FCA will closely monitor how the Federal banking agencies adjust Basel III and apply it to the institutions they supervise. As always, the FCA has authority to further amend § 615.5134, or take other appropriate actions concerning liquidity at FCS banks in response to external developments, including changes to the Basel III framework.

Some commenters allege that our new regulatory approach to liquidity is ''too detailed and prescriptive compared to the principles-based approach'' of the other regulators. Yet, we observe that our new regulation follows the core concepts of the principles-based approach of the other regulators by requiring FCS banks to: (1) Retain an adequate stockpile of high-quality liquid assets to cover the next 15, 30, and 90 days; (2) maintain supplemental liquidity over a longer timeframe; (3) improve liquidity risk management practices; and (4) and enhance contingency funding planning. These requirements will put FCS banks in a stronger position to endure and outlast future crises that could impede their access to funding. Although the commenters may view this approach as ''too detailed and prescriptive,'' it is essential from a safety and soundness perspective.

C. Discount Notes

We received two comments about how the new liquidity regulation may adversely affect the ability of System banks to issue short-term discount notes to fund their operations when financial markets are in turmoil. These commenters assert that discount notes are a strong source of System liquidity during times of crisis. From the commenters' perspective, GSE status enables FCS banks to sell discount notes to investors, who seek high-quality investments during times of market turmoil. The commenters ask the FCA to recognize the liquidity that discount notes provide the FCS during times of market upheaval, and avoid promulgating an inflexible rule that compel System banks to lengthen the maturity of their liabilities and hold more low-yielding liquid assets. The commenters expressed concern that the proposed rule would significantly curtail the issuance of discount notes, which in turn, would raise the costs to the System's customer-owners.

Discount notes are one of many tools that System banks have at their disposal to mitigate liquidity risk. The FCA expects FCS banks to develop balanced and flexible strategies that they can utilize under different scenarios, especially when economic and financial conditions rapidly change. System banks should not become overly dependent on discount notes.

Although discount notes performed well in the last financial crisis, their effectiveness is much less certain when the agricultural sector or the FCS is experiencing significant stress. For example, during the agricultural credit crisis of the mid-1980s, investors demanded high risk premiums on all System debt obligations, including short-term instruments.

By encouraging System banks to diversify their repayment sources for maturing debt, the FCA's regulatory approach enhances safety and soundness. FCS banks face potential refunding risks when they replace maturing debt with new debt issuances especially, very short-term discount notes. If market conditions rapidly deteriorate, investors may demand exorbitant premiums for purchasing System debt securities, and/or FCS banks may find few buyers for their Systemwide securities. Including more high-quality liquid assets in their liquidity reserves is a prudent practice because it helps System banks mitigate these potential refunding risks.

Discount notes are currently in high demand primarily because of the System's strong financial condition and its GSE status. As a result, discount notes are an inexpensive source of funding for the FCS, which can help offset the costs that System banks incur

[13] Our regulation adopts many of the basic concepts in the Basel III liquidity framework. However, the FCA's approach is not identical to Basel III. The Basel III liquidity framework established two minimum standards for funding liquidity. The first standard is the Liquidity Coverage Ratio (LCR), which ensures that commercial banking organizations have sufficient high-quality liquid assets to survive a significant stress event that lasts 1 month. The purpose of the LCR is to promote short-term resilience of a bank's liquidity risk profile. The second standard of the Basel III liquidity framework is the Net Stable Funding Ratio (NSFR), which is designed to provide a stable and sustainable maturity structure for a bank's assets and liabilities over a time horizon of 1 year.

[14] Originally, commercial banking organizations would have been required to fully meet the LCR by January 1, 2015. On January 6, 2013, the Basel Committee delayed the full implementation of the LCR requirement until January 1, 2019.

from holding short-term, high quality liquid assets in their liquidity reserves.

For all these reasons, the final rule is likely to lessen System overall usage of discount notes, but it should not significantly affect the program.

D. Lender of Last Resort

In contrast to depository institutions and other financial institutions, the FCS lacks an assured governmental lender of last resort that could inject liquidity into System banks during times of prolonged paralysis in financial markets. Some commenters encouraged the FCA to accelerate its efforts to find an assured lender of last resort for FCS banks so they will have an emergency source of liquidity if their access to the market becomes impeded.

The FCA and Farm Credit System Insurance Corporation (FCSIC) have undertaken efforts to establish an emergency source of liquidity for the System. These efforts, however, are separate from the FCA's supervision and regulation of liquidity risk management at FCS banks. In the absence of an assured governmental lender of last resort, System banks must maintain sufficient liquidity to absorb the impact of market disruptions and economic downturns. Through FCA's effective regulation and supervision of the System, the System banks are able to assure investors that they have adequate liquidity to meet their obligations, even though they have no assured lender of last resort.

E. GSE Status

Two passages in the preamble to the proposed rule addressed the relationship between investments held for liquidity and the System's GSE status.[15] These passages reiterated the FCA's longstanding position that choosing liquid investments *primarily* for their ability to generate revenue is fundamentally incompatible with the System's GSE status.[16]

These preamble statements generated comments from the Council and one FCS bank. Both commenters interpret our preamble statements as suggesting that GSE status prohibits System banks from generating positive earnings from their liquidity reserves and supplemental liquidity buffers. These commenters claim that these statements indicate that the FCA expects System banks to either lose money or break even on their liquidity portfolios. One commenter asserts that nothing in the Farm Credit Act of 1971, as amended (Act) supports the conclusion that the System's GSE status means that investments cannot generate profits, or at a minimum, cover funding costs. Both commenters claim the proposed rules for Farmer Mac specifically recognize income generation as a legitimate investment purpose and allow Farmer Mac to hold profitable assets in its liquidity reserve and supplemental liquidity buffer. As result, the commenters ask the FCA to provide flexibility so FCS banks can also manage their liquidity portfolios ''in a manner to generate reasonable long-term returns and minimize the cost of liquidity management.''

The FCA reiterates its longstanding position that System banks are GSEs and, therefore, the *primary purpose* of their investment portfolios is to maintain adequate liquidity, manage market risks on their balance sheets, and to manage short-term, surplus funds. Although generating positive earnings should never be the *primary* reason why System banks buy and hold marketable investments, the FCA has never expected the banks to incur losses or only break even on investments. When FCS banks select assets for their liquidity portfolios, the FCA expects them to consider the liquidity characteristics of prospective investments as a more important priority than their earnings-generating capacity. The earning streams from such investments are ancillary to the protection that its liquidity reserve and supplemental liquidity buffer provide each System bank in the event that market access becomes impeded.

Maintaining an adequate stock of high quality liquid assets that can withstand turbulence in the markets often means that System banks must forego higher earnings on certain investments. The highest quality liquid assets can be easily and quickly converted into cash at little or no loss compared to book value. For this reason, highly liquid investments entail less risk and, therefore, they tend to generate lower earnings. Higher earning investments, such as certain mortgage-backed securities (MBS), often proved unsuitable as a backup source of liquidity during the 2008 crisis.[17]

F. Farmer Mac

The Council and a System bank commented that the FCA treats Farmer Mac more leniently than FCS banks. According to these commenters, the FCA is imposing more onerous liquidity requirements on System banks than Farmer Mac, and it is encouraging Farmer Mac to generate earnings from investments while discouraging FCS banks from doing so.

The Council raised these issues when it commented on the investment management rules for System banks and Farmer Mac, and we responded to these concerns in the preambles to the final rules.[18] Our approach towards liquidity is the same as it is for investment management. The liquidity requirements that § 615.5134 imposes on FCS banks are not significantly different or more onerous than the liquidity requirements that proposed §§ 652.35 and 652.40 would impose on Farmer Mac. Although the liquidity rules for System banks and Farmer Mac will continue to differ where appropriate,[19] we made changes to this rule and anticipate changes to the Farmer Mac rule to make the requirements more consistent. Separately, the preamble to the final investment management rule for Farmer Mac stated that § 652.15 would allow Farmer Mac to use non-program investments, including those held for liquidity, to primarily generate earnings and enhance returns for investors.[20] We incorporate by reference our response in the preamble to final § 652.15(a) into this preamble.

VI. Section-by-Section Analysis of the Final Rule

In response to the comments, the FCA has restructured and consolidated the final regulation. The nine main provisions of the proposed rule have been reduced to six in the final rule. The FCA combined proposed §§ 615.5134(b), 615.5134(e), and 615.5134(g) into a single provision, final § 615.5134(b), which now: (1) Establishes the liquidity reserve requirement for all FCS banks; (2) addresses the composition of the liquidity reserve; and (3) specifies the discounts for assets held in the liquidity reserve. We have also deleted the FCA's reservation of authority in proposed § 615.5134(i) from the final regulation. Many of the individual provisions of the

[15] *See* 76 FR 80817 *supra.* at 80820, 80823.

[16] *See* 70 FR 51587 (Aug. 31, 2005); 58 FR 63039, (Nov. 30, 1993).

[17] During the global financial crisis in 2008, financial institutions that held non-agency mortgage-backed securities and asset-backed securities experienced credit quality deterioration, increased credit risk premiums, declines in market valuations, and ultimately reduced liquidity.

[18] *See* 77 FR 66362 (Nov. 5, 2012).

[19] Farmer Mac, in contrast to FCS banks, has a line of credit for $1,500,000,000 with the Secretary of Treasury under section 8.13 of the Act. Farmer Mac may issue obligations to the Secretary of Treasury, and use the proceeds to cover losses it incurs in providing guarantees on securities backed by qualified loans. Farmer Mac may draw on its line of credit with the Secretary of Treasury only after it exhausts the reserves it must maintain under section 8.10 of the Act.

[20] *See* 77 FR 66375, 66377 (Nov. 5, 2012).

final rule have been revised and reorganized to address the commenters' concerns and to enhance their clarity.

A. Section 615.5134(a)—Liquidity Policy

The cornerstone of effective liquidity management at each FCS bank is its liquidity policy, which the board of directors adopts and management implements. Existing § 615.5133(c) requires FCS banks to adopt a liquidity policy. However, the only affirmative requirement that it imposes is that bank policies describe the liquidity characteristics of eligible investments that each Farm Credit bank holds to meet its liquidity needs and institutional objectives. The FCA proposed adding a new paragraph to the liquidity regulation, § 615.5134(a), that for the first time would require Farm Credit banks to address specific issues in their liquidity policies. Proposed § 615.5134(a)(1) focused on the responsibilities of the bank's board of directors while proposed § 615.5134(a)(2) specified seven issues that bank policies must address.

1. Board Responsibility

Proposed § 615.5134(a)(1) would require the board of directors of each FCS bank to adopt a written liquidity policy, which must be compatible with the bank's investment management policies under § 615.5133. The preamble to the proposed rule stated that the FCA expects the bank's liquidity policy to fit into its overall investment strategy because effective liquidity risk management is critically important to the bank's long-term viability.[21] The next provision of proposed § 615.5134(a)(1) would require the bank's board of directors to review its liquidity policy at least once every year, ''affirmatively validate'' the sufficiency of its liquidity policy, and make any revision it deems necessary. The purpose of this provision is to compel the board to ascertain whether its policies enable the bank to respond promptly and effectively to events that could threaten its liquidity.[22] The final sentence of proposed § 615.5134(a)(1) mandates that the board of directors ensure that adequate internal controls are in place so that management complies with and carries out the bank's liquidity policy. As the preamble to the proposed rule explained, strong internal controls prevent losses caused by fraud or mismanagement, and enable FCS banks to respond more quickly and effectively when significant market turmoil arises and impedes access to funding.[23]

The Council commented on proposed § 615.5134(a)(1). These comments focused on the proper roles and responsibilities of the board of directors and senior management in developing and executing the bank's strategies for containing liquidity risk. The Council indicated that the FCA failed to recognize that boards of directors and senior management play different roles in developing, approving, and applying policies, strategies, and procedures. From the commenter's perspective, the proposed rule seems to require boards to develop and adopt liquidity strategies and policies, rather than clearly articulating an appropriate risk tolerance level for the bank. The commenter also asserted that it is the responsibility of senior management to develop strategy, policies, and procedures to manage liquidity, which the board then reviews and approves. Finally, the commenter claims that the FCA's approach about the respective roles of boards of directors and senior management on liquidity policy is the opposite of guidance from the Federal banking agencies.

The FCA responds that the board of directors is ultimately responsible for ensuring that the bank always maintains sufficient liquidity so it can pay maturing obligations and fund its operations. The board discharges this responsibility by adopting policies, procedures, and parameters for monitoring, measuring, managing, and mitigating liquidity risk to the bank. More specifically, the board articulates risk tolerance levels, internal controls, and other limits in its policies, while senior management operates within those parameters as it carries out the board's policy. Contrary to the commenters' claims, the plain language of § 615.5134(a)(1) recognizes that the board of directors and senior management have distinct roles and separate powers in protecting the bank's liquidity. In fact, the preamble to the proposed rule acknowledged that senior management, not the board of directors, develops and implements strategies for managing liquidity risk on a day-to-day basis.[24]

The Council suggested a technical revision to the third sentence of proposed § 615.5134(a)(1), which would require the board to review its liquidity policy at least once a year, and ''affirmatively validate'' its sufficiency, and make any revision it deems necessary. The commenter advised us that FCS banks are uncertain about how boards of directors are supposed to ''affirmatively'' validate the sufficiency of the bank's liquidity policy. The commenter also expressed concern that the word ''affirmatively'' creates unnecessary regulatory uncertainty because it is a vague requirement and is, therefore, subject to varying interpretations over time. For these reasons, the commenter asked us to drop the term ''affirmatively'' from § 615.5134(a)(1), and bring it more in line with the approach of the Federal banking agencies.

The commenter has persuaded us that this provision of proposed § 615.5134(a)(1) is vague and susceptible to different interpretations. Boards of directors at Farm Credit banks should clearly understand exactly what § 615.5134(a)(1) requires them to do. For this reason, we have deleted the phrase ''affirmatively validate'' from the third sentence of § 615.5134(a)(1), and replaced it with the word ''assess.'' Final 615.5134(a)(1) now requires the board of directors of each FCS bank, at least once a year, to: (1) Review its liquidity policy; (2) assess the sufficiency of this policy; and (3)make any revisions to the liquidity policy that it deems necessary. This amendment also addresses the commenters' substantive concerns by more clearly differentiating the roles and responsibilities of the board and senior management. By assessing the sufficiency of the liquidity policy, the board evaluates whether senior management has effectively monitored, measured, managed, and mitigated liquidity risk in accordance with the board's existing policy.

2. Policy Content

Proposed § 615.5134(a)(2) focused on the content of the board's liquidity policies. This regulatory provision identifies seven different issues that a Farm Credit bank, at a minimum, must address in its liquidity policies. As noted in the preamble to the proposed rule, the policies of each FCS bank should be comprehensive and commensurate with the complexities of the bank's operations and its risk profile.[25]

Proposed § 615.5134(a)(2) elicited comments from the Council and all four Farm Credit banks. These comments ranged from general statements about the effects that § 615.5134(a)(2) would have on liquidity management at FCS banks to detailed critiques and recommendations about each clause of this provision. All five commenters

[21] *See* 76 FR 80817 *supra.* at 80819.

[22] *Id.*

[23] *See* 76 FR 80817 *supra.* at 81820.

[24] *Id.* at 80819.

[25] *Id.* at 80820.

deemed proposed § 615.5134(a)(2) as too complex, detailed and prescriptive. These commenters urged the FCA to enact a regulatory provision that is more general in nature, rather than specify the content of board policies in detail.

Several commenters expressed concern that § 615.5134(a)(2) would inhibit the banks' ability to effectively manage their liquidity and investments. We received comments that proposed § 615.5134(a)(2), when combined with the new investment management regulation, create a complex layering of regulatory requirements that are both duplicative and unduly burdensome to the banks. The Council commented that our regulation would hamper the banks from taking an integrated risk management approach to investments and liquidity. By detailing what a policy must contain, this commenter claimed that FCA inappropriately interfered with the discretion of the board to direct and oversee liquidity management at the bank.

The FCA declines the System's request to replace § 615.5134(a)(2) with a regulatory provision that is general in nature. This provision is a vital component of FCA's new regulation because it strengthens liquidity risk management practices at FCS banks. By requiring board policies to address specific core issues, the regulation instills greater discipline in liquidity risk management practices that will better enable System banks to outlast adverse economic, financial, and market conditions under differing circumstances and scenarios. Rather than interfering with the discretion of the board to direct and oversee liquidity management at the bank, § 615.5134(a)(2) requires board policies, at a minimum, to focus on those basic core components of liquidity risk management that are crucial to the bank's safety and soundness.

This regulation does not prevent System banks from adopting an integrated risk management approach to liquidity and investments. In fact, prudent risk management requires financial institutions to simultaneously monitor, manage, and mitigate risks to individual assets, various portfolios, and the entire institution. Our regulation requires boards to specifically address liquidity risk as part of their efforts to manage the bank's investments. Nor is this provision duplicative of our investment management regulation because it states that board policies must describe how assets in the liquidity reserve or supplemental liquidity buffer would enable the bank to continue funding its operations if market access is impeded.

One bank commented that our approach compels System banks to engage in management practices that focus on regulatory compliance rather than sound liquidity management. The FCA disagrees with the commenter. No conflict exists between compliance with this regulation and sound liquidity management practices at System banks. To the contrary, regulatory compliance works in tandem with sound and disciplined liquidity management practices at financial institutions. In fact, sound management practices already in place at System banks influenced us as we developed this regulatory requirement.

The Council, on behalf of System banks, offered comments and suggestions about each of the seven different issues that proposed § 615.5134(a)(2) requires every FCS bank to address, at a minimum, in its liquidity policy. As explained in greater detail below, we revised § 615.5134(a)(2)(i) by reducing the number of issues that the board's policy must address from seven to five. Additionally, we modified some of the provisions in § 615.5134(a)(2) to address the commenters' concerns. However, we also retained other provisions of proposed § 615.5134(a)(2) without revision.

Proposed § 615.5134(a)(2)(i) would require the bank's policy to address the purpose and objectives of the liquidity reserve. The preamble to the proposed rule stated that this section of the bank's policies should distinguish the purpose and objectives of the liquidity reserve from the other operations and asset-liability functions of the bank, including management of interest rate risk.[26] Effective liquidity management at a Farm Credit bank should reflect its board's philosophy and position about the purpose and objective of the liquidity reserve.[27] When market access becomes impeded, the liquidity reserve should enable each Farm Credit bank to maintain sufficient cash flows to pay its obligations, meet its collateral needs, and fund operations in a safe and sound manner.[28] The preamble to the proposed rule observed that § 615.5134(a)(2)(i) would help instill greater discipline in liquidity risk management at System banks by requiring them to shift their focus from the financial performance of the liquidity reserve to its primary function as an emergency source of funding.[29]

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

The Council commented that proposed § 615.5134(a)(2)(i) addresses a ''superfluous and self-evident matter'' that needs no regulation. The commenter also took issue with our position that the board's liquidity policy should distinguish liquidity management from asset-liability management by stating that there is no reason why any bank would confuse the two.

The commenter has not persuaded us to omit § 615.5134(a)(2)(i) from the final rule. Our reasons for incorporating this provision into the revised liquidity rule remain valid and, therefore, we adopt § 615.5134(a)(1)(i) as a final regulation without change. This provision does not add a new regulatory requirement for FCS banks. Since 1993, our investment management regulation at § 615.5133 has required the boards of Farm Credit banks to adopt written policies that address the purpose and objectives of the banks' investments, including those held for liquidity.

Adding a provision to the liquidity regulation that specifically requires bank boards to address the purpose and objectives of the liquidity reserve in written policies strengthens the System's safety and soundness by instilling greater discipline in the liquidity risk management practices at System banks. An integrated approach to all aspects of asset-liability management is crucial to safety and soundness, and in this context, System liquidity reserves must be adequately stocked so each bank can pay its debts and fund its operations when deteriorating economic and financial conditions obstruct market access. The goal of § 615.5134(a)(2)(i) is to prompt boards and senior management to more carefully consider how various types of prospective investments help counteract liquidity risk to their banks. A policy that specifically focuses on the purpose and objectives of the liquidity reserves will guide each bank to select a proper mix of high-quality liquid assets that will counteract liquidity risk to the bank based on the complexity of its operations and its risk tolerance level. In addition to their liquidity reserves, System banks may hold other eligible investments for the purposes of managing interest rate risks and investing surplus short-term funds.

The commenter also disputed our preamble statements that the liquidity reserve is primarily an emergency source of funding. We already responded to this particular comment earlier in the discussion above about GSE status.

Proposed § 615.5134(a)(2)(ii) would require the board's liquidity policy to establish diversification requirements for the liquidity reserve portfolio.[30] For safety and soundness reasons, this diversification requirement would apply both to the liquidity reserve and supplemental liquidity buffer. As the FCA observed in the preamble to the proposed rule, diversification by tenor, issuer, issuer type, maturity, size, asset type, and other factors can reduce certain investment risks.[31] The diversification policy should establish a desired mix of cash and investments that the bank should hold for liquidity under a variety of scenarios, including both normal and adverse conditions.[32] Each bank should tailor its diversification policy so it is consistent with regulatory requirements, as well as the bank's individual needs and financial condition. Additionally, the diversification policy should be revised in response to changes in the business environment and the bank's circumstances.[33] In formulating these criteria, each bank would consider, in light of its needs and circumstances, how diversification would better enable it to always maintain sufficient liquidity to pay its obligations and continue operations if market access is curtailed or fully impeded.

The FCA received comments about proposed § 615.5134(a)(2)(ii) from the Council and a System bank. The Council found this requirement redundant to the diversification requirement in the investment management rule. The commenter asked the FCA to omit § 615.5134(a)(2)(ii) from the final rule, because it ''is unnecessary and * * * creates a complex and confusing layering of the regulatory requirements in the investment area.''

The FCA retains § 615.5134(a)(2)(ii) as a provision in the final rule without revision. Diversification of the liquidity portfolios at Farm Credit banks is essential to the System's overall safety and soundness, especially because the FCS is a GSE that finances primarily the agricultural sector of the economy and it currently has no assured governmental lender of last resort. The liquidity portfolio serves a different function than other segments of the investment portfolio that the bank relies on for other asset-liability risk management purposes. The 90-day liquidity reserve, for example, should be comprised of cash and high quality, shorter-term, and consequently lower-yielding liquid investments, whereas these kinds of assets may not necessarily be suitable for other investment purposes. For this reason, the FCA expects bank policies to focus on, and specifically address diversification of the liquidity portfolio separately from the diversification of other segments of the investment portfolio.

A Farm Credit bank commented on a preamble passage, which stated that the policy must: (1) Address the desired mix of cash and investments that FCS banks should hold under a variety of scenarios; and (2) establish criteria for diversifying assets based on issuers, maturities, and other relevant factors. The commenter stated that these sorts of specific matter can and do change daily, which requires management to quickly respond. From the commenter's perspective, § 615.5134(a)(2)(ii) should not require boards to embed such specific details into a policy that cannot be quickly changed as an adverse scenario unfolds. In the commenter's opinion, this regulatory diversification requirement eliminates senior management's ability to exercise discretion and judgment to respond to a looming threat to the bank's liquidity. This commenter also perceives this and other provisions of proposed § 615.5134(a)(2) as inappropriately blurring the board's responsibilities to set policy parameters with senior management's duty to establish best practices and operational procedures for day-to-day operations.

The FCA responds that this provision requires the board to establish general parameters about diversification. Senior management works within the confines of the board's policy. Senior management should have the opportunity to provide input as the board develops its diversification policy for the bank's liquidity portfolio. This input should result in a diversification policy that enables senior management to adjust the composition of the liquidity portfolio as part of its daily operation of the bank in accordance with board policy.

Proposed § 615.5134(a)(2)(iii) would require board policies to establish maturity limits and credit quality standards for investments that the bank holds in its liquidity reserves. The preamble to the proposed rule explained this aspect of the bank's policies would help management to target and match cash inflows from loans and investments to outflows needed to pay its maturing obligations.[34]

The FCA received a comment about proposed § 615.5134(a)(2)(iii) from the Council. The commenter agrees that the liquidity policy needs to address the composition of investments that System banks hold in their liquidity reserve. However, the commenter asked us to delete this provision from the final rule because the provisions of § 615.5134(b), which pertain to different levels of the liquidity reserve, already addresses this issue with sufficient specificity. The FCA is persuaded by this comment, and it omits this provision from the final regulation.

The preamble to proposed § 615.5134(a)(2)(iii) discussed the credit quality standards for investments held in the bank's liquidity portfolio. According to the preamble, FCS banks may consider the credit ratings issued by a Nationally Recognized Statistical Rating Organization (NRSRO) when it determines the credit quality of a security, but it may not rely solely or disproportionally on such ratings. The FCA also asked for comments on approaches concerning creditworthiness standards for investments. The Council commented that the System appreciated the FCA's position on this issue, and referred us to its comments on this issue in previous rulemakings pertaining to investment management and capital. The FCA plans to address how FCS institutions should use external credit ratings to assess the credit quality of securities in these other rulemakings.

Under proposed § 615.5134(a)(2)(iv), the board's policy should cover the target number of days of liquidity that the bank needs, based on its business model and risk profile. Estimating the target number of days of liquidity that the bank will need to outlast various stress events is an effective tool for managing and mitigating liquidity risks.[35] The preamble to the proposed rule stated that the FCA expects each Farm Credit bank to include a prudent amount of unfunded commitments in its calculation of the target amount of liquidity it will need to survive a liquidity crisis in the markets.[36]

The FCA received a comment about proposed § 615.5134(a)(2)(iv) from the Council. The commenter agreed with this regulatory provision because it concurred that the days of liquidity target is an appropriate and logical risk tolerance measure that boards should include in their banks' policies. The FCA retains proposed

[30] The FCA plans to propose amendments to its eligible investment regulation, which in all likelihood, would address diversification of the entire investment portfolio. FCA's existing § 615.5133(c) requires diversification of credit, market, and liquidity risk in the investment portfolio.

[31] *See* 76 FR 80817, *supra.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

§ 615.5134(a)(2)(iv) without substantive change, but redesignates it as final § 615.5134(a)(2)(iii).

Proposed § 615.5134(a)(2)(v) would require bank policies to address the elements of the CFP in proposed § 615.5134(h). The CFP addresses unexpected events or unusual business conditions that increase liquidity risk at Farm Credit banks. One of the objectives of the proposed rule is to strengthen contingency funding planning at System banks. According to the preamble to proposed § 615.5134(a)(v), an effective CFP would cover at a minimum: (1) Strategies, policies, and procedures to manage a range of stress scenarios; (2) chains of communications and responsibility within the bank; and (3) implementation of the CFP during all phases of an adverse liquidity event.[37]

The Council and a System bank submitted comment letters opposing this provision. Both commenters encouraged us to delete this provision from the final rule. The commenters stated that when proposed § 615.5134(a)(v) is read literally, it seems to require the bank board to incorporate the entire CFP into its written policy. They advised us that the regulation should not require banks to document detailed operational procedures for the CFP in their policies. The bank pointed out that management may need to make practical operational changes that would have no significant impact on safety and soundness of the overall CFP. However, any such changes could require board approval if such procedures for the CFP are part of the policy. Accordingly, the commenters advised us that a more prudent approach is to require FCS banks to develop an effective CFP consistent with this regulation.

The FCA agrees with the commenters that it is impractical and burdensome to require the board to incorporate the entire CFP into its written policy. Additionally, incorporation of the CFP into the board's policy could limit management's ability to dynamically modify the CFP as conditions change. For these reasons, the FCA omits § 615.5134(a)(2)(v) from the final regulation.

Proposed § 615.5134(a)(2)(vi) would require the board's policy to address delegations of authority pertaining to the liquidity reserves.

The FCA received no comment about this regulatory provision. Accordingly, we adopt it as final § 615.5134(a)(2)(iv) without revision.

The final provision of proposed § 615.5134(a)(2) would require the board's policy to address reporting requirements, which at a minimum would require management to report to the board at least once every quarter about compliance with the bank's liquidity policy and the performance of the liquidity reserve portfolio. This provision would also require management to report any deviation from the bank's liquidity policy, or failure to meet the board's liquidity targets immediately to the board. The purpose of this provision is to ensure that an effective reporting process is in place, and management communicates accurate and timely information to the board about the level and sources of the bank's exposure to liquidity risk. These reports should enable the board to take prompt corrective action if any problems arise. The FCA expects the board to consider these quarterly reports when it conducts its annual review of the bank's liquidity policy and decides whether to make any revisions pursuant to § 615.5134(a)(1).

The Council commented on proposed § 615.5134(a)(2)(vii). Although the commenter agreed that a quarterly reporting requirement is prudent, it advised us that the requirement that senior management ''immediately report'' any deviation from the bank's policy or any failure to meet the liquidity targets was unworkable. The commenter asked us to clarify what level of deviation or failure would require senior management to ''immediately'' report to the board. The commenter also asked to quantify ''immediately.''

The FCA redesignates proposed § 615.5134(a)(2)(vii) as final § 615.5134(a)(v). We have also revised this provision to address the commenter's concerns. The first sentence of this provision remains unchanged. As such, the board's policy must require management to report to the board at least once every quarter about compliance with the bank's liquidity policy and the performance of the liquidity reserve portfolio. However, the FCA has amended the second sentence of this provision to require management to report any deviation from the bank's liquidity policy, or failure to meet the board's liquidity targets, to the board before the end of the quarter if such deviation or failure has the potential to cause material loss to the bank. This revision, which is self-explanatory, addresses the commenter's concern by requiring early reporting of deviations or failures that threaten the bank's liquidity or viability.

B. Liquidity Reserve and Discounts

The proposed rule contained three separate provisions that established a liquidity reserve requirement, addressed the composition of the liquidity reserve, and specified discounts for assets held in the liquidity reserve. More specifically, proposed § 615.5134(b) articulated the core liquidity reserve requirement for FCS banks, while proposed § 615.5134(e) governed the composition of the liquidity reserve, and proposed § 615.5134(g) specified the discounts for the different assets in bank liquidity reserve. We organized proposed § 615.5134(e) in a table format, while the other two provision were expressed in text.

The Council asked us to incorporate the discount table in the preamble to the proposed rule into the text of the final regulation. The commenter suggested that the table ''would be a superior and cleaner approach than the wording of the proposed regulation text.'' In accepting the commenter's advice, we decided to incorporate the discount table into final § 615.5134(b), rather than keeping it as a free-standing regulatory provision. As we reorganized and restructured the regulation, we realized that the final rule would be easier to read, understand, and implement if we also merged proposed § 615.5134(e) into final § 615.5134(b). We received no substantive comments about the specific discount percentages in proposed § 615.5134(g). Accordingly, we incorporate them into final § 615.5134(b) without amendment.

Proposed § 615.5134(b) would require each Farm Credit bank to maintain at all times a liquidity reserve sufficient to fund at least 90 days of the principal portion of maturing obligations and other borrowing of the bank. The Council and a System bank supported this provision. Accordingly, the FCA is retaining this core requirement as the first sentence of final § 615.5134(b) with one minor, stylistic revision.

The second sentence of proposed § 615.5134(b) would require each System bank to maintain a supplemental liquidity buffer in accordance with proposed § 615.5134(f). As part of our restructuring and reorganization of the final liquidity regulation, this sentence has been removed from final § 615.5134(b), although final § 615.5134(e) still requires all Farm Credit banks to maintain a supplemental liquidity buffer. We received several substantive comments about the supplemental liquidity buffer, which we will address below in the preamble to final § 615.5134(e).

[37] 76 FR 80817, *supra.* at 80821.

The third sentence of proposed § 615.5134(b) would require FCS banks to discount liquid assets in accordance with proposed § 615.5134(g). As addressed above, we have incorporated proposed § 615.5134(g) into final § 615.5134(b) without substantive revision.

The final sentence of proposed § 615.5134(b) states that the liquidity reserve must be comprised only of cash, including cash due from traded but not yet settled debt, and qualified eligible investments under § 615.5140 that are unencumbered and marketable under proposed § 615.5134(c) and (d). Both the existing and proposed regulations specify that the liquidity reserve must be comprised of cash, including cash due from traded but not yet settled debt, and qualified eligible investments under § 615.5140. We received no comment about this requirement.

The final sentence of proposed § 615.5134(b) differs from the existing rule in that it requires all investments held in the liquidity reserve to be marketable under proposed § 615.5134(d). The FCA received several comments about our definition of ''marketability'' in proposed § 615.5134(d), and how this definition applied to the bank's liquidity assets in different situations. The FCA responded to the commenters' concerns by adjusting the definition of ''marketable'' in final § 615.5134(d), and discussing their concerns in the appropriate preamble section below.

Proposed § 615.5134(e) addressed the composition of the liquidity reserve. The first two sentences of the proposed rule contained cross-references to proposed § 615.5134(b) and (e). The FCA has omitted these cross-references from the final rule because they are superfluous now that the FCA has combined all three paragraphs into a single provision.

More substantively, the FCA proposed for the first time to divide the 90-day liquidity reserve into two levels. Under our original proposal, the first level of the liquidity reserve would provide the bank with sufficient liquidity to pay its obligations and continue operations for 30 days if market access became partially or fully impeded during a national security emergency, a natural disaster, or intense economic or financial turmoil. The proposed rule would require FCS banks to use the instruments in the first level of the liquidity reserve to meet obligations that mature starting on day 1 through day 30. Additionally, the proposed rule would mandate that cash and certain instruments with a final maturity of 3 years or less comprise at least 15 days of the first level of the liquidity reserve. The 15-day sublevel would provide the bank with enough cash and short-term, highly liquid assets so it could pay its obligations and fund its operations for 15 consecutive days during an emergency when the debt markets are closed, or the System's funding costs become untenable.

Final § 615.5134(b) divides the liquidity reserve into three levels. This revision is part of our efforts to restructure and reorganize this provision so it is easier to read, understand, and apply, as the commenters requested. However, this revision is not substantive. Under final § 615.5134(b), the first level of the liquidity reserve covers obligations that mature on days 1 through 15. Similarly, level 2 applies to days 16 through 30, while level 3 covers days 31 through 90. This revision improves the clarity of the regulation by more clearly communicating: (1) The exact period of time each level of the liquidity reserve covers; and (2) which assets a bank may hold in each level.

The table in proposed § 615.5134(e) identified the assets that would comprise Level 1 of the bank's liquidity reserve. All of these assets are highly liquid because they are either cash, or investments that are high quality, close to their maturity, and marketable. Under the proposed rule, Farm Credit banks could hold the following assets in Level 1 of their liquidity reserve:

- Cash (including cash balances on hand, cash due from traded but not yet settled debt, insured deposits held at federally insured depository institutions in the United States;
- United States Treasury securities that have final maturities and other characteristics that would best enable the bank to fund operations if market access becomes obstructed;
- Other *marketable* obligations backed by the full faith and credit of the United States [38];
- MBS issued by the Government National Mortgage Association (Ginnie Mae);
- Senior debt securities of Government-sponsored agencies that mature within 60 days, excluding the debt securities of FCS banks and Farmer Mac; and
- Diversified investment funds that are comprised exclusively of Level 1 instruments.

Under the proposed rule, the second level of the liquidity reserve would provide System banks with sufficient liquidity to fund their obligations and continue operations for the next 60 days (days 31 through 90). Under proposed § 615.5134(e), FCS banks would hold Level 2 assets to mitigate liquidity risks associated with a prolonged stress event. Level 2 investments would include:

- Additional amounts of Level 1 investments;
- Government-sponsored agency senior debt obligations with maturities that exceed 60 days, excluding FCS debt securities;
- Government-sponsored agency MBS; and
- Diversified investment funds that are comprised exclusively of Levels 1 and 2 instruments.

The FCA received no comments that opposed the assets that the proposed rule designated for the liquidity reserve. Under final and redesignated § 615.5134(b), Level 1 assets are:

- Cash (including cash balances on hand, cash due from traded but not yet settled debt, insured deposits held at federally insured depository institutions in the United States;
- Overnight money market instruments;
- Obligations of the United States with a final remaining maturity of 3 years or less;
- Senior debt securities of Government-sponsored agencies that mature within 60 days, excluding the debt securities of FCS banks and Farmer Mac; and
- Diversified investment funds that are comprised exclusively of Level 1 instruments.

In the proposed rule, we inadvertently excluded overnight money market investments from the list of highly liquid assets that FCS banks could hold in the first 15 days of their liquidity reserve. Overnight money market investments are promptly convertible into cash at their face value, and as their name implies, they mature overnight. As a result, these assets have characteristics that are similar to cash. Adding overnight money market investments to the list of assets that FCS banks are authorized to hold in Level 1 of the liquidity reserve should raise no objection or controversy. It is a standard practice of financial institutions to hold overnight money market investments for liquidity. For this reason, we have included these instruments in the list of highly liquid assets that FCS banks are authorized to hold in their liquidity reserve.

Under the final rule, the following assets qualify for Level 2 of the liquidity reserve:

[38] Obligations that are backed by the full faith and credit of the United States, but are not marketable, are ineligible for the bank's liquidity reserve under § 615.5134(d).

- Additional Level 1 instruments;
- Obligations of the United States with a final remaining maturity of more than 3 years;
- MBS that are backed by the full faith and credit of the United States as to the timely repayment of principal and interest; and
- Diversified investment funds comprised exclusively of Level 1 and Level 2 instruments.

Under the final rule, Level 3 assets are:

- Additional Level 1 and Level 2 instruments;
- Government-sponsored agency senior debt securities with maturities exceeding 60 days, excluding the senior debt securities of FCS banks and Farmer Mac;
- Government-sponsored agency MBS that the timely repayment of principal and interest is not explicitly backed by the full faith and credit of the United States;
- Money market instruments maturing within 90 days; and
- Diversified investment funds comprised exclusively of Levels 1, 2, and 3 instruments.

The Council and two Farm Credit banks submitted substantive comments about concerns they had with three policy positions that the FCA articulated in the preamble to proposed § 615.5134(e). Only one of these concerns necessitates an adjustment to the regulation. We respond to the two other issues below.

One FCS bank acknowledged that proposed § 615.5134(e) was remarkably close to the practices that FCS banks already follow. According to the commenter, System banks voluntarily maintain 15 days of ''pristine'' liquidity, followed by a sufficient amount of high quality assets that provide liquidity for the next 60 days. Beyond that, FCS banks comply with current regulatory minimum of 90 days of liquidity with other investments. The commenter pointed out that all Farm Credit banks have voluntarily agreed to hold at least 120 days of liquidity.

However, this bank along with the Council commented that proposed § 615.5134(e) introduces greater complexity and burden to liquidity management in a way that does not strengthen the liquidity of any FCS bank. The commenters illustrated the System's concern by pointing to a passage in the preamble to the proposed rule which stated that FCS banks would first draw on the 15-day sublevel in the event of significant stress. The commenters advised us that drawing down instruments in the 15 days of ''pristine'' instruments may not necessarily be the best approach for a bank to take in certain scenarios. According to the commenters, the bank may anticipate more difficult market conditions in the future and, therefore, it may decide that a more prudent approach is to continue holding its most ''pristine'' liquid assets in place. Thereby, other factors may favor the sale of the least ''pristine'' liquid assets first. The commenters expressed concern that our interpretation of proposed § 615.5134(e) would deny System banks the flexibility to determine which assets in the liquidity reserve to draw upon first during a crisis.

The commenters' concerns have merit. The FCA confirms that final § 615.5134(b) does not prescribe which assets in the liquidity reserve a System bank must draw upon first during a crisis. Instead, the final rule will leave this matter to the discretion of the bank. Changes to the text and format of § 615.5134(b) clarify that the final regulation does not require FCS banks to liquidate their most ''pristine'' liquid assets first during times of market stress. Additionally, language in the proposed rule that would have required FCS banks to ''sequentially apply'' specific instruments to obligations that mature within specified timeframes has been omitted from the final rule. Finally, the FCA modified the text of the provision so it requires each Farm Credit bank to structure its liquidity reserve so that it has sufficient assets of various calibers to meet obligations that mature within each of the specified timeframes. These changes signal that each bank has discretion to liquidate assets in whatever order that best serves its interests as it responds to mounting distress in the markets.

Next, the Council asked us to clarify a passage in the preamble which stated that ''each FCS bank must document and be able to demonstrate to FCA examiners how its liquidity reserve mitigates the liquidity risk posed by the bank's business mix, balance sheet structure, cash flows, and on-and-off balance sheet obligations.'' The commenter wanted to know if this preamble statement signals that the FCA is increasing documentation requirements on FCS banks, and subjecting their liquidity practices to more stringent examination. After noting that FCS banks currently document and demonstrate compliance with our liquidity regulations to FCA examiners, the commenter requested that FCA examiners maintain open lines of communication with the directors and senior managers of System banks instead of making examinations of liquidity more rigorous.

The FCA responds that the commenter is misconstruing the preamble passage. The commenter is referring to a broader preamble passage which verified that proposed § 615.5134(e) would allow each FCS bank to exceed the *minimum* 90-day liquidity reserve requirement based on its individual liquidity needs. As the preamble to the proposed rule discussed, each bank must determine the appropriate level, size, and quality of its liquidity reserve based on its liquidity risk profile so it is able to meet both expected and unexpected cash flows and collateral needs without adversely affecting its daily operations and financial condition. The size and level of the liquidity reserve should also correlate to the bank's ability to fund its obligations at reasonable cost.

The preamble passage in question reaffirms the FCA's longstanding position that each FCS bank must be able to demonstrate to FCA examiners how its liquidity reserves mitigate the liquidity risk posed by the bank's business mix, balance sheet structure, cash flows, and on- and off-balance sheet obligations. This preamble statement does not signal that the FCA is changing its approach to examining liquidity at System banks, or that such examinations will now become confrontational. Instead, it indicates how the FCA will apply its longstanding examination approach to the new liquidity regulation.

The Council and a Farm Credit bank commented about the role that MBS and collateralized mortgage obligations (CMOs) issued or guaranteed by a Government agency or a Government-sponsored agency [39] play in a bank's liquidity reserve under proposed § 615.5134(e). Under the proposed rule, FCS banks could hold: (1) MBS issued by Ginnie Mae in Level 1 of the liquidity reserve; and (2) Government-sponsored agency MBS (primarily issued by Fannie Mae and Freddie Mac) in Level 2. The commenters expressed concern that our proposal excluded MBS and CMOs that are guaranteed by Ginnie Mae, Fannie Mae, and Freddie

[39] Our regulation, § 615.5131, defines a ''government agency'' as ''the United States Government or an agency, instrumentality, or corporation of the United States Government whose obligations *are* fully and explicitly insured or guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.'' The same regulation defines a ''Government-sponsored agency'' as ''an agency, instrumentality, or corporation chartered or established to serve public purposes specified by the United States Congress but whose obligations *are not* fully and explicitly insured or guaranteed by the full faith and credit of the United States Government, including but not limited to any Government-sponsored enterprise.''

Mac from both levels of the liquidity reserve.

These two commenters want the final rule to authorize Farm Credit banks to hold MBS and CMOs issued or guaranteed by Ginnie Mae and the two Government-sponsored agencies in both Levels 1 and 2 of their liquidity reserves because these instruments, in their opinion, are inherently liquid and marketable. The commenters asked us to explicitly recognize that such investments are consistent with the definition of ''marketable'' in § 615.5134(d) because of the ease and certainty of their valuation. The commenters contend that the FCA is more restrictive than the Board of Governors for the Federal Reserve System, which proposed to allow systemically important financial institutions (SIFIs) to include unencumbered government and agency guaranteed MBS and CMO in their 30-day liquidity reserves.[40]

These comments appear to be based on a passage in another section of the preamble which stated that the regulation, in practice, effectively excludes structured investments from the liquidity reserve at FCS banks, although banks could hold these assets in their supplemental liquidity buffer.[41] This same preamble passage carved out an exception that would allow System banks to hold MBS issued by Ginnie Mae in their liquidity reserves because they are highly marketable securities backed by the full faith and credit of the United States.

Our regulatory approach towards the MBS of Ginnie Mae, Fannie Mae, and Freddie Mac is rooted in safety and soundness considerations. A diverse selection of MBS instruments is available in the markets, each exhibiting different credit, prepayment, and other risks. As a result of the risk factors, many of these instruments are less suitable for the higher levels of the liquidity reserve although they may generate more earnings for the bank. The 2008 crisis illustrated the limitations of MBS as a liquidity backstop.

For these reasons, the FCA's regulatory approach assigns different categories of MBS to different levels of the liquidity reserve based on their liquidity characteristics. Final § 615.5134(b) excludes MBS from the first level of the liquidity reserve (days 1 through 15) because they lack the liquidity characteristics of cash, overnight money market instruments, United States Treasuries with a final remaining maturity of 3 years or less, or the senior debt securities of Government-sponsored agencies that mature within 60 days. Under the final rule, MBS and CMOs issued or guaranteed by a Government agency or a Government-sponsored agency qualify for either Level 2 or Level 3 of the bank's liquidity reserve. The liquidity characteristics and risk profiles of these Ginnie Mae, Fannie Mae, or Freddie Mac MBS or CMOs determine whether they belong in Level 2 or Level 3 of the liquidity reserve.

The final rule does not treat all MBS and CMOs of government agencies and Government-sponsored agencies equally, as the commenters requested. As discussed above, Ginnie Mae, Fannie Mae, and Freddie Mac offer a diverse array of MBS, and each exhibits different liquidity characteristics and risk factors. The final rule recognizes these differences by assigning MBS and CMOs issued or guaranteed by Ginnie Mae, Fannie Mae, and Freddie Mac to different levels of the liquidity reserve.

Fannie Mae and Freddie Mac are currently under the conservatorship of the United States Treasury, and their long-term status is uncertain. This complicates the FCA's efforts to devise an approach that balances our safety and soundness concerns with the needs of System banks for flexibility in selecting Ginnie Mae, Fannie Mae, and Freddie Mac MBS for their liquidity reserves. While the ultimate status of Fannie Mae and Freddie Mac is unresolved, the FCA has decided that the full faith and credit of the United States is the standard that determines whether particular MBS or CMOs belong in Level 2 or Level 3 of the bank's liquidity reserve. Under the final rule, MBS that are issued or guaranteed by Ginnie Mae, Fannie Mae, and Freddie Mac qualify for Level 2 of the liquidity reserve if they are explicitly backed by the full and credit of the United States as to the timely payment of principal and interest. Conversely, MBS that are issued or guaranteed by Fannie Mae and Freddie Mac belong in Level 3 of the liquidity reserve if the timely payment of principal and interest are not explicitly backed by the full faith and credit of the United States. The reason the final rule relegates MBS of Government-sponsored agencies that are not explicitly backed by the full faith and credit of the United States to Level 3 of the liquidity reserve is because they could potentially experience reduced marketability during a widespread market crisis.

We are unable to confirm, as the commenter requests, that all Government-sponsored agency MBS are automatically marketable within the meaning of § 615.5134(d). Their ''ease and certainty of valuation'' depends on whether they exhibit low market risks under stressful conditions. We note that the Federal banking regulators continue to require depository institutions to risk weight the MBS of Fannie Mae and Freddie Mac at 20 percent, while the MBS of Ginnie Mae are risk weighted at zero. Under the circumstances, the FCA does not conclude that Fannie Mae and Freddie Mac MBS have the same low risks and ease of valuation as Ginnie Mae MBS. This is another reason why the final rule does not treat all MBS of government agencies and Government-sponsored agencies the same.

The approach that the Board of Governors of the Federal Reserve System follows for SIFIs is not appropriate for FCS banks in this situation. FCS banks are GSEs that primarily finance a single industry, and they have no assured government lender of last resort. Some FCS banks were vulnerable to an overabundance of MBS of Government-sponsored agencies in their liquidity portfolios during the 2008 crisis. SIFIs are large, diversified, and complex organizations that have a different risk profile than FCS banks. In contrast to SIFIs and federally chartered or federally insured commercial banks, FCS banks do not have assured access to the discount windows at Federal Reserve Banks. Under the circumstances, there is no certainty that the Federal Reserve Banks would extend lines of credit to Farm Credit banks during times of stress and accept MBS as collateral.

The preamble to the proposed rule stated that the FCA was contemplating whether to add a specific provision to the final regulation that would require the liquidity reserve to cover unfunded commitments and other contingent obligations. As the preamble observed, unfunded commitments and other material contingent obligations potentially expose FCS banks to significant safety and soundness risk. Requiring FCS banks to hold sufficient liquidity to cover unfunded commitments and other contingencies would mitigate risks that pose a threat to their liquidity, solvency, and viability, but it could also impose significant burdens and opportunity costs on these System banks. For this reason, we asked the public whether the final rule should explicitly require the liquidity reserve to cover unfunded commitments and other contingency, and if so, under what conditions.

The Council, on behalf of System banks, responded that the FCA should wait until the Federal banking agencies

[40] *See* 77 FR 594, 609 (Jan. 5, 2012).

[41] *See* 76 FR 80817 *supra.* at 80822.

finalize Basel III guidance for the calculation of the liquidity coverage ratio and net stable funding ratio. Under the circumstances, the commenter recommended that we subsequently address this matter in another rulemaking, or through policy guidance. The FCA agrees, and has not added a provision addressing unfunded commitments and other contingencies to final § 615.5134(b) during this rulemaking. Instead, the FCA will pay close attention to how the Basel Committee and the Federal banking agencies address unfunded commitments. If appropriate, the FCA will revisit this issue at a later time.

C. Unencumbered Investments in the Liquidity Reserve

Currently, existing § 615.5134(b) requires all investments that System banks hold to meet their liquidity reserve requirement to be free of lien. The proposed rule would expand upon this concept by requiring FCS banks to hold only unencumbered assets in their liquidity reserve. Under proposed § 615.5134(c), an asset is unencumbered if it is free of lien and is not explicitly or implicitly pledged to secure, collateralize, or enhance the credit of any transaction. Proposed § 615.5134(c) also would prohibit any FCS bank from using an investment in the liquidity reserve as a hedge against interest rate risk pursuant to § 615.5135 if liquidation of that particular investment would expose the bank to a material risk of loss. As the FCA explained in the preamble to the proposed rule, unencumbered investments are free of the impediments or restrictions that would otherwise curtail the bank's ability to liquidate them to pay its obligations when normal access to the debt market is obstructed.

The FCA received one comment about proposed § 615.5134(c) from the Council. The commenter agreed that investments in the liquidity reserve must be free of lien, and not pledged for any other purpose. However, the commenter opposed the provision in proposed § 615.5134(c) that would prohibit a Farm Credit bank from using an investment in the liquidity reserve as a hedge against interest rate risk pursuant to § 615.5134 if liquidation of the particular investment would expose the bank to a material risk of loss. Besides claiming that ''material risk of loss'' is an ambiguous standard, the commenter contends that this requirement is ''unreasonably limiting and complex.''

The commenter believes that our regulations should grant System banks greater flexibility to use liquid securities for multiple investment purposes. During normal times, securities that Farm Credit banks hold to manage interest rate risk can also provide liquidity without sacrificing the bank's hedge position. For this reason, the commenter claims that securities used to hedge interest rate risk are not diminished from a liquidity perspective. If economic or financial adversity impedes market access, the commenter asserts a System bank could prudently choose to sell a liquid security held as an interest rate hedge so it could raise funds to pay maturing obligations. Finally, the commenter claims that our position is inconsistent with the position of the Federal banking agencies, which only excludes investments from liquidity reserves when they are used to hedge trading assets.

The FCA retains, without revision, the last sentence in final § 615.5134(c), which prohibits a Farm Credit bank from using an unencumbered investment held in its liquidity reserve as a hedge against interest rate risk if liquidation would expose the bank to a material risk of loss. The objective of this regulatory provision is to require System banks to primarily concentrate on counteracting liquidity risks when they select assets for the 90-day liquidity reserve. As discussed elsewhere in this preamble, System banks must stock the liquidity reserve with cash and high-quality liquid securities that are readily convertible into cash at or close to their book value at times when market access becomes impeded. Farm Credit banks dilute the liquidity reserve's capacity to serve as an emergency source of funding when these assets are used for multiple purposes. The purpose of this provision is to ensure that liquidity is the dominant consideration of a System bank when it purchases a security for inclusion in its liquidity reserve. Farm Credit banks may, however, choose investments for the supplemental liquidity buffer that serve the dual purpose of mitigating liquidity risk and hedging interest rate risk.

Moreover, this provision does not ban System banks from hedging interest rate risk with assets held in the liquidity reserve. Instead, it specifically states that an unencumbered investment held in the liquidity reserve cannot be used as a hedge against interest rate risk *only if* liquidation of that particular investment would expose the bank to a material risk of loss. The FCA disagrees with the commenter that this provision is ambiguous about what constitutes a material risk of loss. Exposure to material risk of loss would depend on the risk profile and financial condition of each bank. A Farm Credit bank could be exposed to a material risk of loss if it must sell investments that double as hedges for interest rate risks in order to pay its obligations and fund its operations when market access is impeded. Once these securities have been sold, the bank will then have an exposure to interest rate risk that is no longer hedged. If its interest rate risk exposure is significant, the bank could incur a material risk of loss.

The Council claims that a Farm Credit bank could pledge these securities as collateral in a secured borrowing (repo) transaction, rather than liquidating its hedge position. A passage in the commenter's letter states that ''when used as collateral, these investments can generate liquidity without loss to the hedge position.''

In response, the FCA notes the repo market for certain types of securities may cease to function during economic or financial crises. In fact, during the 2008 crisis, many financial institutions discovered that they could not pledge many types of securities as collateral in the repo markets although in other circumstances these assets were liquid, marketable, and valuable as collateral. For these reasons, the FCA declines to change its position on this issue.

Finally, we address the Council's comment that our position is inconsistent with the position of the Federal banking agencies, which only excludes investments from liquidity reserves when they are used to hedge trading assets. Farm Credit banks generally hold investments until maturity, rather than trading for profit. As stated above, the final rule allows a System bank to hedge interest rate risk with assets held in the liquidity reserve provided that the hedging activity would not expose the bank to a material risk of loss in a liquidity crisis. Additionally, FCS banks may hold investments that hedge market risks in their supplemental liquidity buffers. From a safety and soundness perspective, the Federal banking agencies' position on this issue is not suitable for the FCS. The FCS is a GSE that lends almost exclusively to a single sector of the economy, it does not take deposits, and it lacks an assured governmental lender of last resort. These reasons justify the FCA's more conservative regulatory approach.

D. Marketable Security

Under our proposal, all eligible investments that a System bank hold in its liquidity reserve must be marketable. Proposed § 615.5134(d) specifies the criteria and attributes that determine whether investments are marketable for the purposes of this regulation. Investments that meet all the proposed marketability criteria would be deemed to possess the characteristics of high-quality liquid assets that are suitable for the liquidity reserve at each FCS bank. Proposed § 615.5134(d)(1) states that an investment is marketable if it:

1. Can be easily and immediately converted into cash with little or no loss in value;
2. Exhibits low credit and market risks;
3. Has ease and certainty of valuation; and
4. Can be easily bought or sold.

We received one comment on this section from the Council on behalf of the four System banks. The commenter stated that the four criteria impose ''an impossible and unworkably vague standard'' and suggested that the FCA adopt an approach that emphasized asset quality rather than marketability. The commenter raised objections to three of the four criteria described above. The commenter did not object to the second criterion, which specifies that a marketable investment displays low market and credit risks.

According to the commenter, the criterion that a marketable investment must be easily and immediately converted into cash with little or no loss in value is particularly problematic. The commenter claims that this criterion lacks specificity because it: (1) Cannot be applied in any consistent manner; and (2) is subject to varying interpretations over time. For this reason, the commenter asked us to revise the first criterion so that § 615.5134(d)(1) simply states that a marketable investment ''can be easily converted into cash.'' In the commenter's view, this change would allow Farm Credit banks to include more investments in their liquidity reserve after applying the appropriate discount. The commenter believes that its recommended approach is more logical and workable, and consistent with safety and soundness.

The FCA responds that section 4.3(c) of the Act requires Farm Credit banks to pledge certain securities as collateral for the debt obligations they issue. This provision of the Act includes marketable securities approved by the FCA as assets that System banks may pledge as collateral for their borrowings.

A Farm Credit bank should be able to sell any instrument that it holds for liquidity quickly and at close to its book value. The sale of a security for which the fair value and book value diverge significantly can affect capital and earnings to the extent that it exacerbates liquidity risks. Of particular concern is a situation where the sale of an investment held primarily for liquidity results in a significant loss. Such an outcome may mean that a System bank will not generate sufficient revenue from the liquidation of an asset to pay its obligations and fund its assets when it is experiencing significant stress. For this reason, we continue to believe that each System bank must be able to sell any investment held for liquidity purposes with no or minimal effect on its earnings. The commenter's suggestion that the final rule allow investments to qualify for the liquidity reserve if the bank can ''easily'' convert them into cash at a steep discount from their book value does not address our safety and soundness concerns. In fact, this recommendation would relax an existing safety and soundness standard rather than strengthen it.

However, the commenter's concern that proposed § 615.5134(d)(1) is not susceptible to consistent application and interpretation over time has merit. For this reason, we have changed ''immediately'' to ''quickly'' so FCS banks have clearer guidance and greater flexibility about converting liquid assets into cash. We consider ''quickly'' to mean hours or a few days even during adverse market conditions.

We received no comment about proposed § 615.5134(d)(2), which states that a marketable security exhibits low credit and market risks. This criterion is a vital safety and soundness standard for investments held in System bank's liquidity reserve. Accordingly, we adopt proposed § 615.5134(d)(2) as a final regulation without revision.

The Council asks the FCA whether proposed § 615.5134(d)(3), which would require marketable investments to have ease and certainty of valuation, would exclude structured investments, such as CMOs, particularly those issued by Government-sponsored agencies, from the liquidity reserves at Farm Credit banks. From the commenter's perspective, such a result would be inconsistent with both: (1) The objectives of the liquidity reserve requirement; and (2) with the approach taken by the Basel Committee and the Federal banking agencies.

The commenter's question stems from the preamble to proposed § 615.5134(d)(3), which stated that an instrument has ease and certainty of valuation if the components of its pricing formulation are publicly available. Additionally, the same preamble passage states that the pricing of high-quality liquid assets are usually easy to ascertain because they do not depend significantly on numerous assumptions. For these reasons, the preamble passage stated that proposed § 615.5134(d)(3) would ''in practice'' exclude most structured investments from System bank liquidity reserves. The preamble noted, however, that certain MBS, such as those issued by Ginnie Mae, are highly marketable under this criterion, and they would qualify for a System bank liquidity reserve.

The FCA responds that § 615.5134(d)(3) does not automatically include or exclude all structured investments, such as CMOs from bank liquidity reserves. Some CMOs have ease and certainty of valuation while others do not. For this reason, the FCA expects each bank to conduct due diligence on CMOs that it is considering for its liquidity reserve, and document its conclusions. Bank management should be able to explain its decision to FCA examiners.

Under proposed § 615.5134(d)(4), the final attribute of a marketable investment is that it can be easily bought or sold. As a general rule, money market instruments are easily bought and sold although they are not traded on a recognized exchange. Otherwise, proposed § 615.5134(d)(4) recognizes securities as ''marketable'' if they are listed on a developed and recognized exchange market. Listing on a public exchange enhances the transparency of the pricing mechanisms of the investment, which in turn, enhances its marketability and liquidity. An investment also would comply with the requirements of proposed § 615.5134(d)(4) if investors can sell or convert them into cash through repurchase agreements in active and sizeable markets, even in times of stress.

The commenter advised us to reconsider our approach to this requirement. The commenter pointed out that exchanges enhance transparency of the price of stock, but not bonds and other debt obligations. Another concern of the commenter is that references to trading on public exchanges may conflict with guidance for the treatment of investments under FASB Fair Value Classification. For this reason, the commenter asks that we omit the phrase ''developed and recognized exchange markets'' and reorganize this provision so it aligns with the approach of the Federal banking agencies.

The FCA acknowledges that this comment has merit. For this reason, final § 615.5134(d)(4) will now state that ''Except for money market instruments, can be easily bought and sold in active and sizeable markets without significantly affecting prices.'' This revision addresses the commenter's concerns while ensuring that instruments in System bank liquidity reserves are marketable because they can be easily bought and sold in active markets where their prices are transparent.

E. Supplemental Liquidity Buffer

The FCA proposed to strengthen liquidity management at Farm Credit banks by introducing the new concept of a supplemental liquidity buffer into this regulation. Proposed § 615.5134(f) would require all Farm Credit banks to establish and maintain a supplemental liquidity buffer that would provide a longer term, stable source of funding beyond the 90-day minimum liquidity reserve. The supplemental liquidity buffer would complement the 90-day minimum liquidity reserve. Whereas the primary purpose of the 90-minimum liquidity reserve is to furnish sufficient short-term funding to survive an immediate crisis, the supplemental liquidity buffer would enable Farm Credit banks to manage and mitigate liquidity risk over a longer time horizon.

Under proposed § 615.5134(f), Farm Credit banks would hold supplemental liquid assets that are specific and commensurate to the risks they face in maintaining stable longer term funding. Besides providing FCS banks with a longer term source of stable funding, each bank could draw on the supplemental liquidity buffer if a heavy demand for funds strains its 90-day minimum liquidity reserve during times of turbulence in the market. This supplemental liquidity buffer provides an additional cushion of liquidity that should enable FCS banks to endure prolonged periods of uncertainty. System banks could also deploy assets in the supplemental liquidity buffer to offset specific risks to liquidity that their boards have identified in their liquidity policies and CFPs.

Proposed § 615.5134(e) contained five provisions. First, as stated above, the proposed rule would require all FCS banks to hold liquid assets in excess of the 90-day minimum in the liquidity reserve. However, the proposed rule does not specify the length of time the supplemental liquidity buffer should cover. Second, proposed § 615.5134(f) states that the supplemental liquidity buffer be comprised of cash and qualified eligible investments listed in § 615.5140. As a result, this regulation would allow FCS banks to hold qualified eligible investments in their supplemental liquidity buffer that they could not hold in their 90-day liquidity reserve. Third, proposed § 615.5134(f) states that each bank must be able to liquidate any qualified investment in its supplemental liquidity buffer within the timeframe established by the board's liquidity policies at no less than 80 percent of its book value. Fourth, the proposed rule would require a Farm Credit bank to remove from its supplemental liquidity buffer any investment that has, at any time, a market value that is less than 80 percent of its book value. These two provisions are designed to limit losses that the bank may incur on assets held in its supplemental liquidity buffer. As we explained in the preamble to the proposed rule, the liquidity and marketability characteristics of qualified investments in the supplemental liquidity buffer would be called into question if their market value were to fall 20 percent or more below book value. Finally, proposed § 615.5134(f) would require the amount of supplemental liquidity that each bank holds, at a minimum, to: (1) Meet the requirements of the board's liquidity policy; (2) provide excess liquidity beyond the days covered by the liquidity reserve; and (3) comply with the applicable portions of the bank's CFP.

The FCA received comments about the supplemental liquidity buffer from the Council and three Farm Credit banks. None of these commenters opposed the new regulatory requirement that all FCS banks establish a supplemental liquidity buffer. In fact, one commenter pointed out that all the banks have mutually agreed to hold a minimum of 120 days of liquidity, and in practice actually have much more.

A Farm Credit bank commented that the supplemental liquidity reserve effectively increases the days of liquidity for System banks. As a result, the commenter claimed the supplemental liquidity buffer will compel System banks to further lengthen the maturity of their liabilities and potentially reduce the issuance of Discount Notes to fund their operations. The FCA has already responded to comments that assert our new liquidity regulation diminishes System reliance on discount notes. Before the 2008 crisis, FCS banks voluntarily held levels of liquidity far in excess of what the FCA requires under this final rule without detriment to the Discount Notes program.

The Council and two banks opposed two provisions in proposed § 615.5134(f) that would require the market value of all qualified investments in the bank's supplemental liquidity buffer to remain at or above 80 percent of book value. These commenters deem this benchmark as an inappropriate regulatory requirement because, in their opinion, it is subjective, inflexible, unduly restrictive, and arbitrary. According to these three commenters, interest rate fluctuations could cause the market value of an asset to fall below 80 percent of its book value, but the asset could, nevertheless, remain marketable and liquid. Although a System bank may be less willing to sell securities that have declined in market value, the commenters point out that it could still liquidate these assets in most circumstances if the need to raise cash arises. From the commenters' perspective, the premise that a 20-percent decline in value impairs the marketability and liquidity of a security lacks sound support or substantiation. For these reasons, the commenters ask the FCA to eliminate these two provisions from the final regulation.

Redesignated and final § 615.5134(e) continues to require every qualified investment in the bank's supplemental liquidity buffer to retain a market value that equals or exceeds 80 percent of its book value. The FCA reasons that the liquidity reserve, combined with the supplemental liquidity buffer significantly fortify each FCS bank and the System as a whole so they can withstand a future financial crisis. Requiring all qualified investments in the supplemental liquidity buffer to retain at least 80 percent of their book value ensures that each FCS bank has a sufficient quantity of high quality liquid assets to outlast adverse economic or financial conditions that obstruct the System's access to the debt market. We are concerned that liquidation of assets at a loss would be problematic at any time, but especially during a crisis. Investments that can be liquidated only at substantial discounts may not provide the bank with adequate funds to pay its obligations when market access becomes impeded and, therefore, they would not comprise a stable funding source during times of financial stress. Also, the resulting recognition of loss could further exacerbate the financial stress being experienced by an individual FCS bank and the entire System. Additionally, if these types of investments could not be liquidated, or could be sold only at a significant loss, the alternative of a repo transaction to provide liquidity at that level of discount would most likely not be available given concerns as to their actual value. This 80-percent requirement ensures that all qualified investments in each bank's supplemental liquidity buffer provide a source of high quality assets that could be used to meet liquidity demands in various (short- to long-term) timeframes.

The FCA has revised its final rule so the 80-percent requirement is less burdensome to FCS banks. The proposed rule would have required banks to apply an 85-percent discount to all assets in the supplemental liquidity reserve that did not otherwise qualify for the different levels of the liquidity reserve. Under final § 615.5134(e), each investment in the supplemental liquidity buffer that has a market value of at least 80 percent of its book value, but does not qualify for Levels 1, 2, or 3 of the liquidity reserve, must be discounted to (multiplied by) 90 percent of its book value. This 90-percent discount is less steep than the 85-percent rate that the FCA originally proposed. Additionally, this 90-percent rate is more consistent with § 615.5134(b)(3) of our existing regulation which establishes a 90-percent discount for securities with greater risks.

F. Contingency Funding Plan (CFP)

The existing regulation requires all Farm Credit banks to have a contingency funding plan that addresses liquidity shortfalls during market disruptions. A CFP is a blueprint that helps financial institutions to respond to contingent liquidity events that may arise from external factors that adversely affect the financial system, or they may be specific to the conditions at an individual institution. The 2008 crisis revealed actual and potential vulnerabilities in contingency planning at FCS banks. As a result, the FCA proposed regulatory amendments that are designed to strengthen the System's contingency funding plans.

Proposed § 615.5134(h) would require each Farm Credit bank to have a CFP that ensures sources of liquidity are sufficient to fund normal operations under a variety of stress events. Whereas the existing regulation only requires the CFP to address liquidity shortfalls caused by market disruptions, the proposed rule would require the CFP to explicitly cover other stress events that threaten the bank's liquidity, such as: (1) Rapid increases in loan demand; (2) unexpected draws on unfunded commitments; (3) difficulties in renewing or replacing funding with desired terms or structures; (4) pledging collateral with counterparties; and (5) reduced market access.

Additionally, the proposed rule would require each FCS bank to maintain an adequate level of unencumbered and marketable assets in its liquidity reserve that could be converted into cash to meet its net liquidity needs based on estimated cash inflows and outflows for a 30-day time horizon under an acute stress scenario. The objective of this requirement is to instill discipline at each Farm Credit bank. As an integral and critical part of its contingency planning, the FCA expects each bank to be able to evaluate its expected funding needs and its available funding sources during reasonably foreseeable stress scenarios. In this context, the FCA expects each System bank to analyze its cash inflows and outflows, and its access to funding at different phases of a plausible, but acute, liquidity stress event that continues for 30 days.

Proposed § 615.5134(h) would require the CFP to address four specific areas that are essential to the bank's efforts to mitigate its liquidity risk. Taken together, these four areas constitute an emergency preparedness plan that should enable the bank to effectively cope with a full range of contingency that could endanger its liquidity. More specifically, the proposed rule would require the CFP to:

- Be customized to the financial condition and liquidity risk of the bank and the board's liquidity policy. As such, the CFP should be commensurate with the complexity, risk profile and scope of the bank's operations;
- Identify funding alternatives that the Farm Credit bank can implement whenever its access to funding is impeded. At a minimum, these funding alternatives must include arrangements for pledging collateral to secure funding and possible initiatives to raise additional capital;
- Mandate periodic stress testing, which would analyze the possible impacts on the bank's cash inflows and outflows, liquidity position, profitability and solvency under a variety of stress scenarios; and
- Establish a process for managing events that imperil the bank's liquidity, and assign appropriate personnel and implement executable action plans that carry out the CFP.

The Council and one Farm Credit bank commented on the proposed rule's provisions governing the CFP. The Council acknowledged that proposed § 615.5134(h) is consistent with the approach of the Federal banking agencies, but it judged the provision as ''too detailed.'' In the commenter's opinion, the provisions of proposed § 615.5134(h) are more appropriate for a policy statement, rather than a regulation. Accordingly, the commenter urged us to revert to the generalized approach of the existing regulation, which in the commenter's view, would grant Farm Credit banks greater flexibility to develop and implement the CFP as circumstances change over time.

The FCA denies this request. As explained earlier, the purpose of this regulatory provision is to correct deficiencies in contingency funding planning at FCS banks that the 2008 crisis revealed.

Contingency funding planning is an essential and crucial element of effective liquidity risk management that enables Farm Credit banks to meet their obligations and continue operations as economic or financial adversity strikes. The FCA's new approach requires the CFP to address specific core issues which are essential to the bank's ability to continue funding its normal operations under a variety of plausible stress scenarios. Additionally, our approach grants FCS banks the flexibility that the commenter seeks by stipulating that each bank must tailor its CFP to its unique liquidity risk profile and tolerance level. In this context, our regulatory approach strikes an appropriate balance by instilling greater discipline in the contingency funding planning process at Farm Credit banks while preserving the banks' flexibility to devise and revise a CFP that addresses its own unique circumstances and conditions.

Both commenters objected to the provision in the proposed rule that would require System banks to conduct periodic stress tests on their cash inflows and outflows, liquidity position, profitability and solvency under a variety of stress scenarios. According to these commenters, additional stress case scenarios are redundant with the investment management regulations, which already require quarterly stress tests. From the commenters' perspective, this new regulatory requirement does not improve effective liquidity management at FCS banks.

The FCA responds that redesignated and final § 615.5134(f)(3) specifically requires stress testing of those factors (such as the bank's cash inflow and outflows, liquidity position, profitability, and solvency) which are key indicators of liquidity. In contrast, the applicable provision of the investment management regulation, § 615.5133(f)(4), focuses on the stress testing in an asset-liability management context. Although some overlap exists, § 615.5133(f) and final and redesignated § 615.5134(f)(3) are neither duplicative, nor in conflict with each other. Instead, the two provisions complement each other as § 615.5133(f) addresses stress testing from a global prospective while final § 615.5134(f) requires specialized stress tests that probe the bank's ability to withstand shocks to its liquidity.

The Council asked the FCA to lessen the stress testing requirement for liquidity, which it views as unduly burdensome. The commenter claims that it would be more effective if managers spent more time on monitoring markets rather than performing ''numerous stress tests of implausible and improbable events.'' From the commenter's perspective, this stress testing requirement does not effectively improve safety and soundness, and the burdens of this provision outweigh its benefits.

The FCA disagrees that stress testing for liquidity will only marginally improve safety and soundness at System banks, or that this regulatory provision is unduly burdensome. The commenter has provided no evidence that stress testing distracts from the bank's ability to monitor markets. Stress tests should be appropriate for the bank's business model and the complexity of its operations. Similarly, stress tests should be based on plausible and probable assumptions concerning stress events that could adversely affect the bank's ability to pay its obligations and continue normal operations during times of economic or financial turbulence. Stress testing is an integral part of effective liquidity risk management that will detect vulnerabilities in the bank's liquidity management early on so management can take corrective action. Appropriate stress testing is an effective liquidity risk management tool that effectively strengthens safety and soundness at FCS banks. From a regulatory perspective, the burdens of the stress testing requirement in final § 615.5134(f)(3) is minimal, while the benefits are great.

The FCA made three non-substantive technical corrections to this regulatory provision. The first sentence of proposed § 615.5134(h) has been broken into two sentences in final and redesignated § 615.5134(f). Additionally, the proposed rule defined stress events as ''including'' specific occurrences, whereas the final rule states that stress events ''include, but are not limited to'' these same occurrences. These changes clarify the scope of this provision without substantively altering its meaning. In the second to last sentence of the main paragraph of this provision, we changed ''based on estimated cash inflows and outflows for a 30-day time horizon under an acute stress scenario'' to ''based on estimated cash inflows and outflows under an acute stress scenario for 30 days.'' This revision corrects the grammar of this provision and enhances its clarity, without changing its meaning. Finally, we made two technical revisions in final and redesignated § 615.5134(f)(3). We changed ''Requiring periodic stress testing, which analyzes the possible impacts'' to ''Requiring periodic stress testing that analyzes the possible effects.'' Changing ''which'' to ''that'' corrects a grammatical error. We corrected the syntax of this provision by changing ''impacts'' to ''effects.'' In the context of this sentence, ''effects'' is more accurate than ''impacts.'' Neither of these revisions is substantive.

G. The FCA's Reservation of Authority

The FCA proposed to strengthen its supervisory and regulatory oversight of liquidity management at Farm Credit banks by adding a new reservation of authority provision to this regulation. Under proposed § 615.5134(i), the FCA would expressly reserve the right to require Farm Credit banks, either individually or jointly, to adjust their treatment of any asset in their liquidity reserves so they always maintain liquidity that is sufficient and commensurate for the risks they face.

The FCA justified this reservation of authority by invoking its Congressional mandate to ensure that FCS institutions comply with applicable laws, fulfill their public policy mission to finance agriculture and other specified activities in rural America, and operate safely and soundly. The Act grants the FCA comprehensive powers to examine, supervise, and regulate the FCS. The FCA reasoned that it must be able to act decisively when a sudden external crisis threatened the System's liquidity.

The Council and a Farm Credit bank opposed proposed § 615.5134(i), and asked the FCA to withdraw it.

After considering comments received, the FCA has decided to omit the reservation of authority from the final regulation. The FCA has comprehensive supervisory authority over all FCS institutions. As a result, the FCA through its examination and enforcement authorities can compel Farm Credit banks, individually or jointly, to promptly take specified action to correct deficiencies in their liquidity management practices if internal or external circumstances so warranted. By approving all obligations that FCS banks issue to fund System operations, and prescribing collateral requirements for such debt, the FCA has an additional mechanism for regulating System liquidity.[42]

As the commenters point out, the FCA may determine in other situations that the best course of action is to relax the liquidity requirements on FCS institutions. In fact, an existing regulation, § 615.5136, authorizes the FCA during an emergency to: (1) Increase the amount of eligible investments that FCS banks may hold pursuant to § 615.5132; or (2) waive or modify the liquidity reserve requirement. As noted in the preamble to the proposed rule, the FCA Board passed a Market Emergency Standby Resolution on November 13, 2008 that would waive the 90-day liquidity reserve requirement for a limited period of time if a crisis shuts or severely restricts the System's access to the debt markets.

For these reasons, the FCA determines it can effectively exercise its supervisory authority over FCS banks during times of economic, financial, or market adversity without inserting the reservation of authority into the liquidity regulation. Because we have omitted the reservation of authority from the final rule, we do not need to address whether it would have violated the APA.

VII. Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa,

[42] *See* Sections 4.2(c), 4.2(d), and 5.l7(a)(4)of the Act; 12 U.S.C. 2153(c), 2153(d), and 2252(a)(4).

2279aa-3, 2279aa-4, 2279aa-6, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

■ 2. Revise § 615.5134 to read as follows:

§ 615.5134 Liquidity reserve.

(a) *Liquidity policy*—(1) *Board responsibility.* The board of each Farm Credit bank must adopt a written liquidity policy. The liquidity policy must be compatible with the investment management policies that the bank's board adopts pursuant to § 615.5133 of this part. At least once every year, the bank's board must review its liquidity policy, assess the sufficiency of its liquidity policy, and make any revisions it deems necessary. The board of each Farm Credit bank must ensure that adequate internal controls are in place so that management complies with and carries out this liquidity policy.

(2) *Policy content.* At a minimum, the liquidity policy of each Farm Credit bank must address:

(i) The purpose and objectives of the liquidity reserve;

(ii) Diversification requirements for the liquidity reserve portfolio;

(iii) The target amount of days of liquidity that the bank needs based on its business model and risk profile;

(iv) Delegations of authority pertaining to the liquidity reserve; and

(v) Reporting requirements, which at a minimum must require management to report to the board at least once every quarter about compliance with the bank's liquidity policy and the performance of the liquidity reserve portfolio. However, management must report any deviation from the bank's liquidity policy, or failure to meet the board's liquidity targets to the board before the end of the quarter if such deviation or failure has the potential to cause material loss to the bank.

(b) *Liquidity reserve requirement.* Each Farm Credit bank must maintain at all times a liquidity reserve sufficient to fund at least 90 days of the principal portion of maturing obligations and other borrowings of the bank. At a minimum, each Farm Credit Bank must hold instruments in its liquidity reserve listed and discounted in the Table below that are sufficient to cover:

(1) Days 1 through 15 only with Level 1 instruments;

(2) Days 16 through 30 only with Level 1 and Level 2 instruments; and

(3) Days 31 through 90 with Level 1, Level 2, and Level 3 instruments.

Liquidity level	Instruments	Discount (multiply by)
Level 1	• Cash, including cash due from traded but not yet settled debt	100 percent.
	• Overnight money market investments	100 percent.
	• Obligations of the United States with a final remaining maturity of 3 years or less.	97 percent.
	• Government-sponsored agency senior debt securities that mature within 60 days, excluding securities issued by the Farm Credit System.	95 percent.
	• Diversified investment funds comprised exclusively of Level 1 instruments	95 percent
Level 2	• Additional Level 1 investments	Discount for each Level 1 investment applies.
	• Obligations of the United States with a final remaining maturity of more than 3 years.	97 percent.
	• Mortgage-backed securities that are explicitly backed by the full faith and credit of the United States as to the timely repayment of principal and interest.	95 percent.
	• Diversified investment funds comprised exclusively of Levels 1 and 2 instruments.	95 percent.
Level 3	• Additional Level 1 or Level 2 investments	Discount for each Level 1 or Level 2 investment applies.
	• Government-sponsored agency senior debt securities with maturities exceeding 60 days, excluding senior debt securities of the Farm Credit System.	93 percent for all instruments in Level 3.
	• Government-sponsored agency mortgage-backed securities that the timely repayment of principal and interest are not explicitly backed by the full faith and credit of the United States.	
	• Money market instruments maturing within 90 days.	
	• Diversified investment funds comprised exclusively of levels 1, 2, and 3 instruments.	

(c) *Unencumbered.* All investments that a Farm Credit bank holds in its liquidity reserve and supplemental liquidity buffer in accordance with this section must be unencumbered. For the purpose of this section, an investment is unencumbered if it is free of lien, and it is not explicitly or implicitly pledged to secure, collateralize, or enhance the credit of any transaction. Additionally, an unencumbered investment held in the liquidity reserve cannot be used as a hedge against interest rate risk if liquidation of that particular investment would expose the bank to a material risk of loss.

(d) *Marketable.* All investments that a Farm Credit bank holds in its liquidity reserve in accordance with this section must be readily marketable. For the purposes of this section, an investment is marketable if it:

(1) Can be easily and quickly converted into cash with little or no loss in value;

(2) Exhibits low credit and market risks;

(3) Has ease and certainty of valuation; and

(4) Except for money market instruments, can be easily bought and sold in active and sizeable markets without significantly affecting prices.

(e) *Supplemental liquidity buffer.* Each Farm Credit bank must hold supplemental liquid assets in excess of the 90-day minimum liquidity reserve. The supplemental liquidity buffer must be comprised of cash and qualified eligible investments authorized by § 615.5140 of this part. A Farm Credit bank must be able to liquidate any qualified eligible investment in its supplemental liquidity buffer within the liquidity policy timeframe established in the bank's liquidity policy at no less than 80 percent of its book value. A Farm Credit bank must remove from its supplemental liquidity buffer any investment that has, at any time, a market value that is less than 80 percent of its book value. Each investment in the supplemental liquidity buffer that has a market value of at least 80 percent of its book value, but does not qualify for Levels 1, 2, or 3 of the liquidity reserve, must be discounted to (multiplied by) 90 percent of its book value. The amount of supplemental liquidity that each Farm Credit bank holds, at minimum, must meet the requirements of its board's liquidity policy, provide excess liquidity beyond the days covered by the liquidity reserve, and satisfy the applicable portions of the bank's CFP in accordance with paragraph (f).

(f) *Contingency Funding Plan (CFP).* The board of each Farm Credit bank must adopt a CFP to ensure sources of liquidity are sufficient to fund normal operations under a variety of stress events. Such stress events include, but are not limited to market disruptions, rapid increase in loan demand, unexpected draws on unfunded commitments, difficulties in renewing or replacing funding with desired terms and structures, requirements to pledge collateral with counterparties, and reduced market access. Each Farm Credit bank must maintain an adequate level of unencumbered and marketable assets in its liquidity reserve that can be converted into cash to meet its net liquidity needs for 30 days based on estimated cash inflows and outflows under an acute stress scenario. The board of directors must review and approve the CFP at least once every year and make adjustments to reflect changes in the bank's risk profile and market conditions. The CFP must:

(1) Be customized to the financial condition and liquidity risk profile of the bank and the board's liquidity risk tolerance policy.

(2) Identify funding alternatives that the Farm Credit bank can implement whenever access to funding is impeded, which must include, at a minimum, arrangements for pledging collateral to secure funding and possible initiatives to raise additional capital.

(3) Require periodic stress testing that analyzes the possible effects on the bank's cash inflows and outflows, liquidity position, profitability and solvency under a variety of stress scenarios.

(4) Establish a process for managing events that imperil the bank's liquidity, and assign appropriate personnel and implement executable action plans that carry out the CFP.

Dated: April 12, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

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S. 716/P.L. 113–7
To modify the requirements under the STOCK Act regarding online access to certain financial disclosure statements and related forms. (Apr. 15, 2013; 127 Stat. 438)
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