

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than \$300 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE-11A. It must also file a Form BE-11B, BE-11C, BE-11D or BE-11E, as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than \$300 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE-11A only items 1 through 26 and Part IV. It must also file a Form BE-11B, BE-11C, BE-11D, or BE-11E as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE-11B, BE-11C, BE-11D, and BE-11E (Report for Foreign Affiliate).

(A) Form BE-11B must be reported for each majority-owned foreign affiliate, whether held directly or indirectly, for which any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$60 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the foreign affiliate is selected to be reported on Form BE-11E.

(B) Form BE-11C must be reported for each minority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$60 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(C) Form BE-11D must be reported for each majority- and minority-owned foreign affiliate, whether held directly or indirectly, established or acquired during the year for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$25 million (positive or negative), at the end of, or for, the affiliate's fiscal year. Form BE-11D is a schedule; a U.S. Reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(D) Form BE-11E must be reported for each foreign affiliate that is selected by BEA to be reported on this form in lieu of Form BE-11B. BEA statistically divides into panels, affiliates for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was

greater than \$60 million (positive or negative), but for which no one of these items was greater than \$300 million (positive or negative), at the end of, or for, the affiliate's fiscal year. At the direction of BEA, U.S. Reporters would alternate reporting these affiliates on Form BE-11B and Form BE-11E.

(iii) Based on the preceding, an affiliate is exempt from being reported if none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$60 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of the items was greater than \$25 million but not over \$60 million must be listed, and key items reported, on schedule-type Form BE-11D.

(iv) Notwithstanding paragraph (f)(3)(iii) of this section, a Form BE-11B, BE-11C, or BE-11E must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

[FR Doc. 2010-32027 Filed 12-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release No. 33-9165; File No. S7-18-10]

RIN 3235-AK70

Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to Rule 312 of Regulation S-T to further extend its application for eighteen months. Rule 312 provides a temporary filing accommodation for filings with respect to asset-backed securities that allows static pool information required to be disclosed in a prospectus of an asset-backed issuer to be provided on an Internet Web site under certain conditions. Under this rule, such information is deemed to be included in the prospectus included in the registration statement for the asset-backed securities. As a result of the extension, the rule will apply to filings

with respect to asset-backed securities filed on or before June 30, 2012.

DATES: *Effective Date:* December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Jay Knight, Attorney-Adviser, Division of Corporation Finance, at (202) 551-3370, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3720.

SUPPLEMENTARY INFORMATION: We are adopting an amendment to Rule 312¹ of Regulation S-T.²

I. Background and Discussion of the Amendment

In December 2004, we adopted new and amended rules and forms to address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") under the Securities Act of 1933³ (the "Securities Act") and the Securities Exchange Act of 1934⁴ (the "Exchange Act").⁵ As part of this rulemaking, we adopted Regulation AB,⁶ a new principles-based set of disclosure items forming the basis for disclosure with respect to ABS in both Securities Act registration statements and Exchange Act reports. Compliance with the revised rules was phased in; full compliance with the revised rules became effective January 1, 2006. One of the significant features of Regulation AB is Item 1105, which requires, to the extent material, static pool information to be provided in the prospectus included in registration statements for ABS offerings.⁷ While the disclosure required by Item 1105 depends on factors such as the type of underlying asset and materiality, the information required to be disclosed can be extensive. For example, a registrant may be required to disclose multiple performance metrics in periodic increments for prior securitized pools of the sponsor for the same asset type in the last five years.⁸

¹ 17 CFR 232.312.

² 17 CFR 232.10 *et seq.*

³ 15 U.S.C. 77a *et seq.*

⁴ 15 U.S.C. 78a *et seq.*

⁵ See *Asset-Backed Securities*, Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506] (adopting release related to Regulation AB and other new rules and forms related to asset-backed securities) (hereinafter, the "2004 Adopting Release").

⁶ 17 CFR 229.1100 *et seq.*

⁷ See Form S-1 (17 CFR 239.11) and Form S-3 (17 CFR 239.13) under the Securities Act. Static pool information indicates how groups, or static pools, of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets' lives, the data allows the detection of patterns that may not be evident from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk.

⁸ 17 CFR 229.1105.

As described in the 2004 Adopting Release, in response to the Commission's proposal to require material static pool information in prospectuses for ABS offerings, many commentators representing both ABS issuers and investors requested flexibility in the presentation of such information. In particular, commentators noted that the required static pool information could include a significant amount of statistical information that would be difficult to file electronically on EDGAR as it existed at that time and difficult for investors to use in that format. Commentators accordingly requested the flexibility for ABS issuers to provide static pool information on an Internet Web site rather than as part of an EDGAR filing.⁹ In response to these comments, we adopted Rule 312 of Regulation S–T, which permits, but does not require, the posting of the static pool information required by Item 1105 on an Internet Web site under the conditions set forth in the rule.¹⁰ We recognized at the time that a Web-based approach might allow for the provision of the required information in a more efficient, dynamic and useful format than was currently feasible on the EDGAR system. At the same time, we explained that we continued to believe at some point for future transactions the information should also be submitted with the Commission in some fashion, provided investors continue to receive the information in the form they have requested. Accordingly, we adopted Rule 312 as a temporary filing accommodation applicable to filings filed on or before December 31, 2009.¹¹ We explained that we were directing our staff to consult with the EDGAR contractor, EDGAR filing agents, issuers, investors and other market participants to consider how static pool information could be filed with the Commission in a cost-effective manner without undue burden or expense that still allows issuers to provide the information in a desirable format. We also noted, however, that it might be necessary, among other things, to extend the accommodation.¹²

On December 15, 2009, we adopted a one-year extension of the filing

accommodation.¹³ In the adopting release for the extension (“2009 Static Pool Extension Adopting Release”), we noted the staff's experience with the rule and that a vast majority of residential mortgage-backed security issuers and a significant portion of ABS issuers in other asset classes have relied on the accommodation provided by the rule to disclose static pool information on an Internet Web site. We also noted that the staff of the Division of Corporation Finance was, at the time, engaged in a broad review of the Commission's regulation of ABS including disclosure, offering process, and reporting of ABS issuers and that along with this review, the staff of the Division of Corporation Finance was continuing to explore whether it was feasible to provide a filing mechanism for static pool information that fulfills the Commission's objectives. We also stated our belief that a proposal for a longer-term solution for providing static pool disclosure would be better considered together with other proposals on the regulations relating to the offer and sale of ABS.

On April 7, 2010, we proposed significant revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities (the “2010 ABS Proposals”).¹⁴ In that release, we proposed to revise Rule 312 to remove the temporary accommodation set to expire on December 31, 2010. In lieu thereof, under the proposal, ABS issuers would be required to file all static pool information on EDGAR; however, we proposed to allow that such information be filed in Portable Document Format (PDF).¹⁵ Also, in lieu of providing the static pool information in the prospectus, we proposed to allow issuers to file the disclosure on Form 8–K and incorporate it by reference. The comment period for the 2010 ABS Proposals expired on August 2, 2010.

On August 30, 2010, we proposed to extend the temporary filing accommodation set forth in Rule 312 of

Regulation S–T for eighteen months so that it would apply to filings with respect to ABS filed on or before June 30, 2012.¹⁶ We received three comment letters that addressed the proposed extension.¹⁷ All three commentators expressed support for the Rule 312 filing accommodation and the proposed extension.¹⁸ The ASF cited the strong preference among both its issuer and investor members for Web-based presentation of static pool information due to its utility and effectiveness and the current lack of an adequate filing alternative.¹⁹ SIFMA and CNH Capital agreed that a long-term solution for providing static pool disclosure would be better considered together with other proposals to revise the regulations governing the offer and sale of ABS.²⁰ With regard to the duration of an extension, ASF requested that the filing accommodation be made permanent or, in the alternative, extended for five years;²¹ CNH Capital requested that the duration of the extension be synchronized with the timing of implementation of the other disclosure requirements that were proposed in the 2010 ABS Proposing Release but have not yet been adopted;²² and SIFMA supported the Commission's proposal to extend the temporary accommodation for the filing of static pool information for eighteen months.²³

We are adopting as proposed an eighteen-month extension to the temporary filing accommodation provided by Rule 312. As we stated in the Proposing Release, we believe a proposal for a long-term solution for providing static pool disclosure would be better considered together with other proposals to revise the regulations governing the offer and sale of ABS. Additionally, on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”).²⁴ Among other things, the Act mandates a number of significant changes to the regulation of ABS offerings. In order to provide

¹³ *Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities*, Release No. 33–9087 (Dec. 15, 2009) [74 FR 67812] (the “2009 Static Pool Extension Adopting Release”).

¹⁴ *Asset-Backed Securities*, Release No. 33–9117 (Apr. 7, 2010) [75 FR 23328] (the “2010 ABS Proposing Release”).

¹⁵ Portable Document Format (PDF) is a file format created by Adobe Systems in 1993 for document exchange. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer for free as they were intended. To view a file in PDF format, you need Adobe Reader, an application distributed by Adobe Systems.

¹⁶ *Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities*, Release No. 33–9137 (Aug. 30, 2010) [75 CFR 54059] (hereinafter, the “Proposing Release”).

¹⁷ The public comment letters we received are available online at <http://www.sec.gov/comments/s7-18-10/s71810.shtml>.

¹⁸ See letters from the American Securitization Forum (“ASF”), CNH Capital America LLC (“CNH Capital”), and the Securities Industry and Financial Markets Association (“SIFMA”).

¹⁹ See letter from ASF.

²⁰ See letters from SIFMA and CNH Capital.

²¹ See letter from ASF.

²² See letter from CNH Capital.

²³ See letter from SIFMA.

²⁴ Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

⁹ See 2004 Adopting Release, Section III.B.4.b.

¹⁰ 17 CFR 232.312(a). Instead of relying on Rule 312, an issuer can include information required by Item 1105 of Regulation AB physically in the prospectus or, if permitted, through incorporation by reference from an Exchange Act report.

¹¹ 17 CFR 232.312(a); see also 2004 Adopting Release, Section III.B.4.b.

¹² 2004 Adopting Release, Section III.B.4.b.

ample time for the Commission and its staff to give proper consideration to comments received on the 2010 ABS Proposals and in light of the changes to the regulations of ABS offerings that are mandated by the Act, we are adopting the extension to the temporary filing accommodation set forth in Rule 312 of Regulation S–T for an additional eighteen months so that it would apply to filings with respect to ABS filed on or before June 30, 2012. Although we are adopting an eighteen-month extension of Rule 312, we may take action on the 2010 ABS Proposals, including the static pool proposal, at any time before the expiration of the extension.

Under the extension, the temporary filing accommodation set forth in Rule 312 of Regulation S–T will apply to filings with respect to ABS filed on or before June 30, 2012. During the extension, the existing requirements of Rule 312 will continue to apply. Pursuant to these requirements, the registrant must disclose its intention to provide static pool information through a Web site in the prospectus included in the registration statement at the time of effectiveness and provide the specific Internet address where the static pool information is posted in the prospectus filed pursuant to Rule 424.²⁵ The registrant must maintain such information on the Web site unrestricted and free of charge for a period of not less than five years, indicate the date of any updates or changes to the information, undertake to provide any person without charge, upon request, a copy of the information as of the date of the prospectus if a subsequent update or change is made to the information and retain all versions of the information provided on the Web site for a period of not less than five years in a form that permits delivery to an investor or the Commission. In addition, the registration statement for the ABS must contain an undertaking pursuant to Item 512(l) of Regulation S–K²⁶ that the information provided on the Web site pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement.²⁷

The Administrative Procedure Act generally requires that an agency publish an adopted rule in the **Federal**

Register 30 days before it becomes effective. This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.²⁸ Because the temporary filing accommodation expires on December 31, 2010, we believe it is necessary to make the amendment effective December 31st so that there is no gap between which an issuer would be required to convert its static pool data into an EDGAR filing. In addition, this extension creates no new requirements but maintains a voluntary accommodation that relieves a registrant from the obligation to file static pool data on EDGAR, provided it makes the information available on a Web site. The Commission therefore believes the extension grants or recognizes an exemption or relieves a restriction. On the basis of the foregoing, the Commission finds good cause to make the amendment effective December 31, 2010.

II. Paperwork Reduction Act

Rule 312 of Regulation S–T was adopted in 2004 along with other new and amended rules and forms to address the registration, disclosure and reporting requirements for ABS under the Securities Act and the Exchange Act. In connection with this prior rulemaking, we submitted a request for approval of the “collection of information” requirements contained in the amendments and rules to the Office of Management and Budget (“OMB”) in accordance with the Paperwork Reduction Act of 1995 (“PRA”).²⁹ OMB approved these requirements.³⁰

Item 1105 of Regulation AB³¹ requires certain static pool information, to the extent material, to be provided in prospectuses included in registration statements for ABS offerings.³² Rule 312 is a temporary filing accommodation that permits the posting of the static pool information required by Item 1105 on an Internet Web site under the conditions set forth in the rule.³³ The amendment to Rule 312 further extends the existing temporary filing accommodation provided by the rule for an additional eighteen months. As is the case today, issuers may choose whether or not to take advantage of the accommodation. The conditions of Rule

312 remain otherwise unchanged. The disclosure requirements themselves, which are contained in Forms S–1 and S–3 under the Securities Act and require the provision of the information set forth in Item 1105 of Regulation AB, also remain unchanged. Therefore, the amendment will not result in an increase or decrease in the costs and burdens imposed by the “collection of information” requirements previously approved by the OMB. No commentator suggested the extension would impose any new paperwork burden.

III. Benefit-Cost Analysis

In this section, we examine the benefits and costs of the amendment. In the Proposing Release, we requested that commentators provide views, supporting information and estimates on the benefits and costs that may result from the adoption of the proposed amendment. No commentator addressed the cost-benefit analysis of the Proposing Release.

A. Benefits

We initially adopted the filing accommodation provided by Rule 312 of Regulation S–T because commentators requested flexibility in the presentation of required static pool information. Given the large amount of statistical information involved, those commentators argued for a Web-based approach that would allow issuers to present the information in an efficient manner and with greater functionality and utility than might have been available if an EDGAR filing was required. We believe this greater functionality and utility has enhanced an investor’s ability to access and analyze the static pool information because investors have been able to access static pool information in more user-friendly formats than was initially capable with filings on EDGAR and also removed the burden on issuers of duplicating the information in each prospectus as well as easing the burdens of updating such information.³⁴ As we discussed in the 2004 Adopting Release, since the information is deemed to be part of the prospectus included in the registration statement, the rule is designed to give investors access to accurate and reliable information.

By further extending the accommodation provided by Rule 312, these benefits to both issuers and investors will continue to apply. As noted in the 2009 Static Pool Extension Adopting Release, based on the staff’s experience since Rule 312 became

²⁵ 17 CFR 230.424.

²⁶ 17 CFR 229.512(l).

²⁷ 17 CFR 232.312. As we indicated in the 2004 Adopting Release, if the conditions of Rule 312 are satisfied, then the information will be deemed to be part of the prospectus included in the registration statement and thus subject to all liability provisions applicable to prospectuses and registration statements, including Section 11 of the Securities Act [15 U.S.C. 77k]. 2004 Adopting Release, Section III.B.4.b.

²⁸ See 5 U.S.C. 553(d).

²⁹ 44 U.S.C. 3501 *et seq.*

³⁰ The collections of information to which Rule 312 of Regulation S–T relates are “Form S–1” (OMB Control No. 3235–0065) and “Form S–3” (OMB Control No. 3235–0073).

³¹ 17 CFR 229.1105.

³² See Form S–1 and Form S–3 under the Securities Act.

³³ 17 CFR 232.312(a).

³⁴ See Section I above and 2004 Adopting Release, Section V.D.

effective in 2006, the vast majority of residential mortgage-backed security issuers and a significant portion of ABS issuers in other asset classes have relied on the accommodation provided by the rule to disclose static pool information on an Internet Web site.³⁵ If we did not further extend the accommodation provided by Rule 312 as we are doing today, static pool information would have been required in EDGAR filings beginning on January 1, 2011. We believe this would have resulted in costs for issuers as they attempt to adjust their procedures in a short period of time in order to present the information in a format acceptable to the EDGAR system and could have resulted in costs to investors if the information filed on EDGAR was presented in a less useful format.

As indicated above, on April 7, 2010, we issued a release proposing to require the filing of static pool information on EDGAR at the same time we proposed other amendments addressing the disclosure, offering process and reporting of ABS issuers.³⁶ We believe that the eighteen-month extension to the temporary filing accommodation contained in Rule 312 will benefit both investors and issuers by maintaining a consistent approach to the filing of static pool information while we and our staff consider comments received on the proposed amendment to static pool filing together with our other proposals regarding the offering and sale of asset-backed securities and in light of the changes to the regulations of ABS offerings that are mandated by the Dodd-Frank Act.

B. Costs

We do not believe the eighteen-month extension of the Rule 312 accommodation will impose any new or increased costs on issuers. In the Cost-Benefit Analysis section of the 2004 Adopting Release, we noted that ABS issuers electing the Web-based accommodation provided by Rule 312 would incur costs related to the maintenance and retention of static pool information posted on a Web site and might also incur start-up costs.³⁷ While it is likely that certain of those costs will continue to impact ABS issuers that elect the Web-based approach during the extension period, we do not believe the amendment will impose any new or increased costs for ABS issuers because it does not change any other conditions to the accommodation or the underlying

filing and disclosure obligations. As a result of the extension of the accommodation, ABS issuers will be able to continue their current practices for an additional eighteen months.

For investors, there may be costs associated with the static pool information not being electronically filed with the Commission. For example, when information is electronically filed with the Commission, investors and staff can access the information from a single, permanent, and centralized location, the EDGAR Web site.³⁸ We think these costs are mitigated by the fact that ABS issuers relying on the Rule 312 accommodation must ensure that the prospectus for the offering contains the Internet Web site address where the static pool information is posted, the Web site must be unrestricted and free of charge, such information must remain on the Internet Web site for five years with any changes clearly indicated and the issuer must undertake to provide the information to any person free of charge, upon request, if a subsequent update or change is made. Furthermore, because the information is deemed included in the prospectus under Rule 312, it is subject to all liability provisions applicable to prospectuses and registration statements.

Investors and issuers may have incurred costs to adjust their processes in anticipation of the lapse of the Rule 312 accommodation and potential reversion to a requirement to file static pool information on EDGAR. In this case, benefits to investors or issuers of not having to change their procedures regarding static pool reporting in a short time frame would be diminished by any costs already incurred in anticipation of the change. We believe such anticipatory action and any associated costs are minimal.

IV. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act requires us, when engaging in rulemaking where we are required to

³⁵ See, e.g., comment letter from EDGAROnline dated December 9, 2009, on the *Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities*, Release No. 33-9074 (Oct. 19, 2009) [74 FR 54767] (the "2009 Static Pool Extension Proposing Release"). EDGAROnline commented that extending the filing accommodation will hinder the quality and comparability of information because investors will not be able to depend on a common repository for cross issuer comparisons. The public comments on the 2009 Static Pool Extension Proposing Release are available at <http://www.sec.gov/comments/s7-23-09/s72309.shtml>.

consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

As discussed in greater detail above, Rule 312 of Regulation S-T was adopted as a temporary filing accommodation so that issuers of ABS could present static pool information on an Internet Web site. The amendment to Rule 312 of Regulation S-T that we are adopting today further extends its application for eighteen months. We are not changing the conditions of Rule 312 or to the disclosure obligations to which it applies. We do not believe that the eighteen-month extension will impose a burden on competition. We also believe the extension of the filing accommodation will continue to promote efficiency and capital formation by permitting ABS issuers to disclose static pool information in a format that is more useful to investors and cost-effective and not unduly burdensome for ABS issuers.

We requested comment on whether the proposed amendment, if adopted, would promote efficiency, competition, and capital formation. We did not receive any comments directly responding to this request.

V. Regulatory Flexibility Act Certification

In Part VII of the Proposing Release, the Commission certified pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 312 of Regulation S-T would not have a significant economic impact on a substantial number of small entities. While the Commission encouraged written comments regarding this certification, no commentators responded to this request or indicated that the amendment as adopted would have a significant economic impact on a substantial number of small entities.

VI. Statutory Authority and Text of the Amendment

The amendment described is being adopted under the authority set forth in Sections 6, 7, 10, 19 and 28 of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77j, 77s and 77z-3).

List of Subjects in 17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ For the reasons set out in the preamble, the Commission hereby amends title 17, chapter II, of the Code of Federal Regulations as follows:

³⁵ See Section I of the 2009 Static Pool Extension Adopting Release.

³⁶ See 2010 ABS Proposing Release.

³⁷ See 2004 Adopting Release, Section V.D.

**PART 232—REGULATION S—
GENERAL RULES AND REGULATIONS
FOR ELECTRONIC FILINGS**

■ 1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 232.312 paragraph (a) introductory text by removing “December 31, 2010” and in its place adding “June 30, 2012” in the first sentence.

By the Commission.

Dated: December 16, 2010.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2010-32098 Filed 12-21-10; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

18 CFR Part 342

[Docket No. RM10-25-000]

**Five-Year Review of Oil Pipeline
Pricing Index**

Issued December 16, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order establishing index for oil price change ceiling levels.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this Final Order concluding its third five-year review of the oil pricing index, established in Order No. 561. After consideration of the initial, reply and supplemental comments, the Commission has concluded that an index level of Producer Price Index for Finished Goods plus 2.65 percent (PPI-FG+2.65) should be established for the five-year period commencing July 1, 2011. At the end of this five-year period, the Commission will once again initiate review of the index to determine whether it continues to measure adequately the cost changes in the oil pipeline industry.

ADDRESSES: Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Andrew Knudsen (Legal Information),
Office of the General Counsel, 888

First Street, NE., Washington, DC 20426, (202) 502-6527;
Michael Lacy (Technical Information),
Office of Energy Market Regulation,
888 First Street, NE., Washington, DC 20426, (202) 502-8843.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

**Order Establishing Index for Oil Price
Change Ceiling Levels**

1. On June 15, 2010, the Commission issued a Notice of Inquiry (NOI),¹ in which it proposed to continue using the Producer Price Index for Finished Goods plus 1.3 percent (PPI-FG+1.3) for the next five-year period beginning July 1, 2011. The Commission applies the index to existing oil pipeline transportation rates to establish new annual rate ceiling levels for pipeline rate changes. The NOI invited interested persons to submit comments on the continued use of PPI-FG+1.3 and to propose, justify, and fully support, any alternative indexing proposals. Comments and reply comments were due August 20, 2010, and September 20, 2010, respectively. Based upon full consideration of the comments and reply comments received, and for the reasons discussed below, the Commission finds that an index of PPI-FG plus 2.65 percent (PPI-FG+2.65) should be established for the five-year period commencing July 1, 2011.

I. Background

A. Establishment of the Indexing Methodology

2. Congress in the Energy Policy Act of 1992 (EPAct 1992) required the Commission to establish a “simplified and generally applicable” ratemaking methodology for oil pipelines² that was consistent with the just and reasonable standard of the Interstate Commerce Act (ICA).³ On October 22, 1993, the Commission issued Order No. 561,⁴ promulgating regulations pertaining to the Commission’s jurisdiction over oil

¹ *Five-Year Review of Oil Pipeline Pricing Index*, 75 FR 34959 (June 21, 2010), FERC Stats. & Regs. ¶ 35,566 (2010) (NOI).

² Public Law 102-486, 106 Stat. 3010, § 1801(a) (Oct. 24, 1992). The EPAct 1992’s mandate of establishing a simplified and generally applicable method of regulating oil transportation rates specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into it. *Id.* § 1804(2)(B).

³ 49 U.S.C. app. 1 (1988).

⁴ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act*, Order 561, FERC Stats. & Regs. ¶ 30,985 (1993), *order on reh’g*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff’d*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996) (AOPL I).

pipelines under the ICA and fulfilling the requirements of the EPAct 1992. In Order No. 561, the Commission developed an indexing methodology for the purpose of allowing oil pipelines to change rates without making cost-of-service filings. The Commission found that the indexing methodology adopted in the final rule simplified and expedited the process of changing rates. The Commission further determined that the indexing methodology would ensure compliance with the just and reasonable standard of the ICA by subjecting the chosen index to periodic monitoring and, if necessary, adjustment. After extensive analysis of proposals from interested parties, the Commission adopted an index of PPI-FG minus 1 percent (PPI-FG-1), which was supported by a methodology developed by Dr. Alfred E. Kahn (Kahn Methodology) on behalf of a group of shippers. The Commission also committed to review every five years the continued appropriateness of the index in relation to industry costs.

3. In the first five-year review, which established the index level for 2001-2006, the Commission deviated from the Kahn Methodology, and, based upon a different analysis, concluded that the index should be retained as PPI-FG-1.⁵ The U.S. Court of Appeals for the District of Columbia (D.C. Circuit) reviewed and remanded the Commission’s order because the Commission failed to justify a departure from the Kahn Methodology used in Order No. 561.⁶ On remand, the Commission used the Kahn Methodology to set an index level of an unadjusted PPI-FG for the five-year period beginning July 2001. This order on remand was upheld by the D.C. Circuit.⁷

4. In the second five-year review, the Commission proposed to retain the rate of an unadjusted PPI-FG. However, based upon the data presented during that proceeding, the Commission adopted an index of PPI-FG+1.3, which was again calculated using the Kahn Methodology.⁸

B. The Kahn Methodology

5. The Kahn Methodology measures changes in operating and capital costs

⁵ *Five-Year Review of Oil Pipeline Pricing Index*, 93 FERC ¶ 61,266 (2000) (First Five-Year Review), *aff’d in part and remanded in part sub nom. AOPL v. FERC*, 281 F.3d 239 (DC Cir. 2002) (AOPL II).

⁶ *AOPL II*, 281 F.3d 239.

⁷ *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶ 61,195 (2003) (First Five-Year Review Remand Order), *aff’d sub nom. Flying J Inc. v. FERC*, 363 F.3d 495 (DC Cir. 2004).

⁸ *Five-Year Review of Oil Pipeline Pricing Index*, 114 FERC ¶ 61,293 (2006) (Second Five-Year Review).