

## Supplement I to Part 1002—Official Interpretations

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### ► Section 1002.14—Rules on Providing [Appraisal Reports] ► Appraisals and Valuations ◀

#### 14(a) Providing appraisals ► and valuations ◀

► 1. *Multiple applicants.* If there is more than one applicant the written disclosure about written appraisals and valuations, and the copies of written appraisals and valuations, need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

##### 14(a)(1) In general. ◀

1. *Coverage.* This section covers applications for credit to be secured by a ► first ◀ lien on a dwelling, as that term is defined in [§ 1002.14(c)] ► § 1002.14(b)(2) ◀, whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, [a loan to finance a child's education] ► a loan to purchase a home ◀).

2. *Renewals.* [This section] ► Section 1002.14(a)(1) ◀ applies when an applicant requests the renewal of an existing extension of credit and the creditor [obtains] ► develops ◀ a new [appraisal report] ► written appraisal or valuation ◀. This section does not apply when a creditor uses the [appraisal report] ► written appraisals and valuations ◀ that were previously [obtained] ► developed in connection with the prior extension of credit in order ◀ to evaluate the renewal request.

► 3. *Written.* For purposes of § 1002.14, a “written” appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. But see § 1002.14(a)(5) regarding the provision of copies of appraisals and valuations to applicants via electronic means.

4. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement that written appraisals and valuations be provided no later than three business days prior to consummation if the creditor provides the copy at or before consummation, except where otherwise prohibited by law. An applicant's waiver is effective under § 1002.14(a) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement. If there is more than one applicant for credit in the transaction, any applicant may provide the statement. ◀

##### [14(a)(2)(i) Notice.

1. *Multiple Applicants.* When an applicant that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent. ]

##### [14(a)(2)(ii) Delivery.] ► 14(a)(3) Reimbursement. ◀

► 1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by State or other law. If the consumer has already paid for the report—for example, as part of an application fee—the

creditor may not require additional fees for the appraisal (other than photocopy and postage costs). ]

##### ► 1. *Photocopy, postage, or other costs.*

Creditors may not charge for photocopy, postage or other costs incurred in providing a copy of a written appraisal or valuation in accordance with this section.

2. *Reasonable fee for reimbursement.* The regulation does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining appraisal or valuation services, so long they are not increased to cover the costs of providing documentation under § 1002.14. However, creditors may not impose fees for reimbursement of the costs of an appraisal where otherwise provided by law. For instance, TILA prohibits a creditor from charging a consumer a fee for the performance of a second appraisal if the second appraisal is required under TILA section 129H(b)(2) (15 U.S.C. 1639h(b)(2)). ◀

##### [14(c)] 14(b) Definitions.

##### ► 14(b)(1) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

##### 14(b)(3) Valuation. ◀

1. [Appraisal reports. Examples of appraisal reports are:] ► Examples of valuations. Examples of valuations include: ◀

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

► iv. Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.

v. Values developed by an automated valuation model, including written comments and other documents submitted to

the creditor in support of the estimate of the property's value.

vi. A broker price opinion prepared by a real estate broker, agent, or sales person, including written comments and other documents submitted to the creditor in support of the estimate of the property's value. ◀

##### 2. Other [reports] ► documentation ◀

[The term “appraisal report” does not cover all documents relating to the value of the applicant's property.] ► Not all documents that discuss or restate a valuation of an applicant's property constitute “written appraisals and valuations” for purposes of § 1002.14(a). ◀ Examples of [reports not covered are:] ► documents that discuss the valuation of the applicant's property but nonetheless are not “written appraisals and valuations” include: ◀

i. Internal documents, [if a third-party appraisal report was used to establish the value of the property] ► that merely restate the estimated value of the dwelling contained in a written appraisal or valuation being provided to the applicant ◀.

ii. Governmental agency statements of appraised value ► that are publically available ◀.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Dated: August 14, 2012.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1005

[Docket No. CFPB–2012–0036]

### Electronic Fund Transfers; Intent To Make Determination of Effect on State Laws (Maine and Tennessee)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of intent to make preemption determination.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing notice of its intent to consider and address requests received to determine whether certain provisions in the laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by the requirements of the Electronic Fund Transfer Act and Regulation E.

**DATES:** Comments must be received on or before October 22, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2012–0036, 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, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. 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:

Gregory Evans or Courtney Jean, Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, at (202) 435-7700.

#### SUPPLEMENTARY INFORMATION:

### I. Background

The Electronic Fund Transfer Act (EFTA), as amended by the Credit Card Accountability and Responsibility and Disclosure Act of 2009, and as implemented by the Bureau's Regulation E, authorizes the Bureau to consider and address requests received to determine whether any inconsistency exists between the EFTA and State law "relating to," among other things, "expiration dates of gift certificates, store gift cards, or general-use prepaid cards."<sup>1</sup> Regulation E provides that State law is inconsistent with the requirements of the EFTA and Regulation E if, among other things, the State law "requires or permits a practice or act prohibited by the federal law."<sup>2</sup> If the State law is inconsistent, Federal law will preempt the State law only to the extent of the inconsistency.<sup>3</sup> Furthermore, Federal law will not preempt a State law if the State law affords consumers greater protection

than the Federal law.<sup>4</sup> The EFTA and Regulation E provide that the Bureau shall make a preemption determination upon its own motion, or upon the request of any State, financial institution, or other interested party.<sup>5</sup>

The Bureau has received three requests for determinations as to whether provisions in the EFTA and Regulation E relating to gift card expiration dates preempt unclaimed property law provisions in Maine, Tennessee, and New Jersey relating to gift cards.<sup>6</sup> The New Jersey request has been rendered moot by a subsequent change in State law.<sup>7</sup> Therefore, the Bureau intends to issue a final determination in response only to the Maine and Tennessee requests after further considering the relevant provisions of Federal and State law as set forth below, as well as any comments received in response to this notice.<sup>8</sup>

### II. The EFTA and Regulation E

Regulation E, which implements the EFTA, generally prohibits any person from selling or issuing a gift certificate, store gift card, or general-use prepaid card with an expiration date unless, among other things, the expiration date for the underlying funds is at least the later of (i) five years after the date the card was issued (or, in the case of a reloadable card, five years after the date that funds were last loaded onto the card) or (ii) the card's expiration date,

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; 12 CFR 1005.12(b).

<sup>6</sup> The requests relating to New Jersey's and Tennessee's laws came from payment card industry representatives. Maine's Office of the State Treasurer submitted a request relating to Maine's law to the Board of Governors of the Federal Reserve System. The Board did not respond to Maine's request before the Board's powers and duties relating to consumer financial protection functions transferred to the Bureau on July 21, 2011. The Bureau thus inherited responsibility for responding to Maine's pending request. The Maine, Tennessee, and New Jersey requests are available for public inspection and copying, subject to the Bureau's rules on disclosure of records and information. See 12 CFR Part 1070.

<sup>7</sup> The New Jersey request sought a determination as to whether Federal law preempted the application to gift cards of New Jersey's unclaimed property law, which deemed gift cards abandoned after two years of nonuse. On June 29, 2012, however, New Jersey amended its unclaimed property law to lengthen the period after which a gift card would be presumed abandoned from two years to five years. Given the intervening amendment to State law, the Bureau views the New Jersey request as moot and does not intend to issue a response.

<sup>8</sup> The Bureau issues this notice pursuant to the authority granted to it by section 922 of the EFTA, 15 U.S.C. 1693q; Regulation E, 12 CFR 1005.12(b); and sections 1022(a) and 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5512(a), (b)(1).

if any.<sup>9</sup> In addition, under the EFTA and Regulation E, such a card generally may not expire unless the terms of expiration are disclosed on the card.<sup>10</sup>

### III. States' Unclaimed Property Laws as Applied to Gift Cards

*General.* States' unclaimed property laws set forth specific periods of time after which custody of particular categories of unclaimed personal property transfers from the entity holding that property to the State for safekeeping. In some States, unclaimed gift cards are one such category of property. The Supreme Court has articulated rules of priority that determine which State is entitled to claim unclaimed intangible property. Such property is transferred presumptively to the State of the last known address of the property owner. If that State does not provide for the transfer of the category of property at issue, or if the property owner's address is unknown, then custody is transferred to the State of incorporation of the entity that is obligated to make payment on the property.<sup>11</sup> The Bureau understands that, when the address of a gift card owner (*i.e.*, the gift card recipient) is unknown, unclaimed gift card funds typically transfer to the State of incorporation of the entity that issued the gift card.

*Maine's Unclaimed Property Statute.* Section 1953 of Maine's Uniform Unclaimed Property Act (the Maine Act) provides that a gift obligation or stored-value card is presumed abandoned two years after December 31 of the year in which the obligation arose or the most recent transaction involving the obligation or stored-value card occurred, whichever is later, including the initial issuance and any subsequent addition of value to the obligation or stored-value card.<sup>12</sup> A business (*e.g.*, a gift card issuer) that has issued gift cards that Maine presumes to be abandoned as of the end of a calendar year must report

<sup>9</sup> 15 U.S.C. 1693l-1(c); 12 CFR 1005.20(e).

Certain categories of cards—notably gift certificates that are issued in paper form only and reloadable cards that are not marketed or labeled as gift cards or gift certificates—are exempt from the expiration date and other gift card provisions in the EFTA. See 15 U.S.C. 1693l-1(a)(2)(D); 12 CFR 1005.20(b). The Bureau's preemption determination would not apply to any such categories of cards.

<sup>10</sup> 15 U.S.C. 1693l-1(c); 12 CFR 1005.20(e).

<sup>11</sup> See *Delaware v. New York*, 507 U.S. 490 (1993).

<sup>12</sup> 33 M.R.S. § 1953 (2011). The terms "gift obligation" and "stored value card" are defined in detail in the Maine Act and may differ in some respects from the terms "gift certificates, store gift cards, or general-use prepaid cards" as used in the EFTA. *Id.* § 1952. Under the Maine Act, "prefunded bank cards," which generally include cards issued by a financial organization and usable at multiple merchants, are deemed abandoned after three years of non-use. *Id.* § 1953.

<sup>1</sup> 15 U.S.C. 1693q; 12 CFR 1005.12(b). In this notice, these three categories are referred to collectively as "gift cards."

<sup>2</sup> 12 CFR 1005.12(b) (emphasis added).

<sup>3</sup> 15 U.S.C. 1693q.

and transfer the gift card funds to Maine by May 1 of the following year.<sup>13</sup> Maine thereafter assumes custody of and responsibility for the unclaimed gift cards, and the Maine Act states that the gift card issuer is relieved of all liability arising thereafter with respect to the property.<sup>14</sup> A business that has transferred unclaimed gift card funds to Maine may elect to make payment to the apparent owner of the card (*i.e.*, may honor the gift card) and may request reimbursement by filing an affidavit with the State.<sup>15</sup> The Bureau understands that, if an issuer were to decline to honor the gift card, the consumer could attempt to reclaim his or her property by submitting an unclaimed property claim form to the Office of the State Treasurer of Maine. To properly submit an effective claim, the consumer would need to determine that Maine is the appropriate State to contact, which might not be obvious if the consumer lives and uses the card in another State. Based on outreach, the Bureau understands that Maine collects approximately \$2.6 million per year in funds relating to unclaimed gift cards.

*Tennessee's Unclaimed Property Statute.* Section 66–29–135 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act (the Tennessee Act) provides that a "gift certificate"<sup>16</sup> issued in the ordinary course of an issuer's business is presumed abandoned if it remains unclaimed by the owner upon the earlier of: (1) The expiration date of the certificate; or (2) two years from the date the certificate was issued.<sup>17</sup> A gift certificate is exempt from the Tennessee Act if the issuer of the certificate does not impose a dormancy charge and when the gift certificate (1) conspicuously states that the gift

certificate does not expire; (2) bears no expiration date; or (3) states that any expiration date is not applicable in Tennessee.<sup>18</sup> An issuer of gift certificates that Tennessee presumes to be abandoned as of the end of a calendar year must report and transfer the gift certificate funds to Tennessee by May 1 of the following year.<sup>19</sup> Tennessee thereafter assumes custody and responsibility for the unclaimed gift certificates, and the issuer is relieved of all liability arising thereafter with respect to the property.<sup>20</sup> A business that has transferred unclaimed gift certificate funds to Tennessee may elect to honor the gift certificate and may request reimbursement by filing a request with the State.<sup>21</sup> The Bureau understands that, if an issuer were to decline to honor the gift certificate, the consumer could attempt to reclaim the funds by submitting an unclaimed property claim form to the Tennessee Department of Treasury. As is true for Maine, to properly submit an effective claim, the consumer would need to determine that Tennessee is the appropriate State to contact, which might not be obvious if the consumer lives and uses the gift certificate in another State. The Bureau does not have precise data concerning the amount of money that Tennessee collects each year in funds relating to unclaimed gift certificates. Given the limited card types that appear to be subject to Tennessee's law, however, the Bureau believes that the amount is likely to be relatively small.

#### IV. Request for Comment

Pursuant to the EFTA, the Bureau intends to consider and address the requests received to determine whether the application of Maine's and Tennessee's unclaimed property statutes to gift cards is inconsistent with the EFTA and Regulation E. In making its determination, the Bureau will consider whether Maine's and Tennessee's statutes may afford consumers greater protection than Federal law. The Bureau invites interested persons to submit

comment on all or any aspects of this notice.

Maine's and Tennessee's laws presume gift cards to be "abandoned" and release businesses from the obligation to honor the gift cards during a time period when, pursuant to Federal law, consumers should be able to use the cards. The Bureau seeks public comment on whether there is any inconsistency between these provisions of state law and the expiration date provisions of the EFTA and Regulation E and, if so, on the nature of the inconsistency. As a related matter, the Bureau solicits public comment on whether and how gift card issuers can comply with both Federal and State law, for example by honoring unclaimed cards and requesting reimbursement from Maine or Tennessee.

The Bureau further seeks comment on whether Maine's and Tennessee's unclaimed property statutes as applied to gift cards afford consumers greater protection than Federal law. For example, the Bureau notes that, once the funds corresponding to a consumer's unclaimed gift card transfer to Maine or Tennessee, those funds presumably are protected from the risk of loss in the event that an issuer later files for bankruptcy. Unclaimed gift cards that have transferred to Maine or Tennessee also should be protected from any inactivity fees that might otherwise be assessed on an unused card, to the extent permitted by Federal or State law.<sup>22</sup> Finally, a consumer would have an indefinite opportunity to attempt to reclaim his or her unclaimed gift card funds from the State and, if successful, might be entitled to receive cash from the State, rather than the right to obtain merchandise.

On the other hand, if unclaimed gift card funds were transferred to Maine or Tennessee after two years of non-use, and if issuers were not required to honor the card, then a consumer might

<sup>13</sup> *Id.* § 1958. Under Maine's law, only sixty percent of the gift obligation's or stored-value card's face value is reportable as unclaimed property. *Id.* § 1953. In addition, a gift card sold on or after December 31, 2011, is not presumed abandoned if it was among those sold by an issuer that sold no more than \$250,000 in gift cards during the preceding calendar year. *Id.*

<sup>14</sup> *Id.* § 1961.

<sup>15</sup> *Id.*

<sup>16</sup> Pursuant to Tennessee's Consumer Protection Act, the term "gift certificate" excludes prepaid telephone calling cards and prepaid cards usable at multiple, unaffiliated merchants or at automated teller machines (*i.e.*, "open-loop" gift cards). Tenn. Code Ann. § 47–18–127(e) (2012). In this discussion of Tennessee's statute, "gift certificate" refers to the concept as used in Tennessee law. Aside from the exclusion for "open-loop" gift cards and prepaid telephone calling cards, the Bureau believes that "gift certificate" for purposes of Tennessee law generally includes gift cards and other similar electronic devices. However, the Tennessee definition of "gift certificate" may differ in some respects from that used in the EFTA.

<sup>17</sup> *Id.* § 66–29–135.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § 66–29–113. The amount presumed abandoned is the price paid by the purchaser, except that for gift certificates issued after December 31, 1996, and redeemable in merchandise only, the amount presumed abandoned is sixty percent of the purchase price. *Id.* § 66–29–135. The Bureau notes that a Tennessee trial court held in 2001 that Tennessee law requires transfer only of the right to claim merchandise by using the gift card (*i.e.*, not transfer of funds). *Service Merchandise Co. v. Adams*, No. 97–2782–III, 2001 WL 34384462 (Tenn. Ch. Ct. June 29, 2001). The statute nevertheless appears to require the transfer of funds.

<sup>20</sup> *Id.* § 66–29–116.

<sup>21</sup> *Id.*

<sup>22</sup> Pursuant to the EFTA and Regulation E, inactivity fees or other service charges generally may not be assessed on gift cards unless there has been no activity on the gift card during the 12-month period ending on the date on which the fee is imposed. 15 U.S.C. 1693j–1; 12 CFR 1005.20(d). State laws may protect unused gift cards from inactivity fees for longer periods or indefinitely. For example, Maine law provides that fees or charges may not be imposed on gift obligations or stored-value cards, except that the issuer may charge a transaction fee for the initial issuance and for each occurrence of adding value to an existing gift obligation or card. 33 M.R.S. § 1953. Under Tennessee law, inactivity fees or other service charges are prohibited for two years after a gift certificate is issued. Tenn. Code Ann. § 47–18–127(b). Based on industry outreach, the Bureau understands that inactivity fees are rare in today's market, particularly for closed-loop cards (*i.e.*, cards usable only at a particular merchant or group of merchants).

only be able to redeem his or her property by submitting an unclaimed property claim form to the State. At a minimum, a consumer first would need to determine that the card should still have been usable, and then would need to determine which State to contact to reclaim funds corresponding to the unclaimed gift card. As discussed above, when an issuer has no record of the gift card owner's name, unused funds for the card will transfer to the State of incorporation of the gift card issuer. Thus, for example, a consumer who purchases and uses in New York a gift card that was issued by a company incorporated in Maine or Tennessee may be required to contact Maine or Tennessee, rather than New York, to attempt to claim funds that have transferred to the State. It is not clear, however, how the consumer would know to do this. In addition, the consumer would be required to spend time and perhaps money completing and submitting any required claim form(s), as well as to wait perhaps several weeks or months to receive his or her property. Finally, the Bureau understands that Maine's and Tennessee's existing processes for claiming unclaimed property generally rely on property owners' names and addresses. It may be difficult for gift card owners to locate and successfully claim their property under those processes, particularly if gift card issuers do not know, and thus do not report to the State, the names of the consumers who own the unclaimed cards (*i.e.*, the gift card recipients).

The Bureau notes that at least one judicial decision has weighed the relative benefits to consumers of the EFTA and Regulation E and States' unclaimed property laws as applied to gift cards. In January 2012, the U.S. Court of Appeals for the Third Circuit upheld a decision by the U.S. District Court for the District of New Jersey that declined to preliminarily enjoin the application to gift cards of New Jersey's unclaimed property law, which at the time presumed gift cards abandoned after two years of non-use.<sup>23</sup> The District Court concluded, and the Third Circuit agreed, that the plaintiffs were unlikely to prove that Federal law preempted New Jersey's unclaimed gift card law. The Third Circuit identified certain benefits of New Jersey's law that, in the court's view, weighed in favor of a conclusion that New Jersey's law was more protective of consumers than the

EFTA and Regulation E.<sup>24</sup> Specifically, once New Jersey received unclaimed gift card funds, it would have held them for consumers indefinitely (*i.e.*, not merely for the minimum five years required under Federal law). In addition, a consumer who submitted a successful claim for his or her funds would have received cash back from the State, as opposed to a card solely redeemable for goods or services.<sup>25</sup> The Bureau notes that the court reached its conclusion in the absence of any specific guidance or determination from the Board of Governors of the Federal Reserve System or from the Bureau.

As noted, the Bureau invites public comment on all or any aspects of this notice, including on the application of Maine's and Tennessee's unclaimed property laws to gift cards, on the nature of any inconsistency between those laws and the expiration date provisions of the EFTA and Regulation E, and on whether Maine's and Tennessee's laws afford consumers greater protection than Federal law. After the close of the comment period, the Bureau will analyze any comments received, conduct any further analysis that may be required, and will publish a notice of final action in the **Federal Register**.

Dated: August 16, 2012.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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**BILLING CODE 4810-AM-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2012-0855; Directorate Identifier 2011-NM-136-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. The existing AD currently requires repetitive inspections to detect cracking of the lower corners of the door frame and

cross beam of the forward cargo door, and corrective actions if necessary. The existing AD also requires eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the existing repetitive inspections. Since we issued that AD, we have received additional reports of fatigue cracking in the radius of the lower frames and in the lower number 5 cross beam of the forward cargo door. This proposed AD would revise the compliance times for the preventive modification; add certain inspections for cracks in the number 5 cross beam of the forward cargo door; and add inspections of the number 4 cross beam if cracks are found in the number 5 cross beam, and corrective actions if necessary. For certain airplanes, this proposed AD would also add a one-time inspection for airplanes previously modified or repaired, and a one-time inspection of the reinforcement angle for excessive shimming or fastener pull-up, and corrective actions if necessary. We are proposing this AD to prevent fatigue cracking of the lower corners of the door frame and number 5 cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

**DATES:** We must receive comments on this proposed AD by October 5, 2012.

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

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

For service information identified in this 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.

<sup>23</sup> See *N.J. Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012), *reh'g denied* (3d Cir. Feb. 24, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*