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# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–1321; Directorate Identifier 2011–NM–045–AD; Amendment 39–17047; AD 2012–09–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes; equipped with an additional center tank (ACT). That AD currently requires identifying the part number of the ACT and, for certain ACTs, replacing the outer ACT manhole cover and seal. This new AD requires modifying certain ACTs by replacing the manhole seal with a new seal; adding certain ACT equipped airplanes to the applicability; and removing Model A320–111 airplanes from the applicability. This AD was prompted by reports that the modification required by the current AD was not fully effective. We are issuing this AD to prevent fuel and/or vapor leakage, which could result in a combustible fuel vapor/air mixture in the cargo compartment, and consequent fire risk.

**DATES:** This AD becomes effective June 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 19, 2005 (70 FR 69067, November 14, 2005).

**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:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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 December 15, 2011 (76 FR 77934), and proposed to supersede AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Following an automatic ACT fuel transfer failure on an A319, it was noted that the ACT manhole cover seals were extruded, allowing leakage.
>
> This condition, if not corrected, can lead to fuel and/or vapour leakage, possibly resulting in a combustible fuel vapour/air mixture in the cargo compartment, which would constitute a fire risk.
>
> DGAC France AD F–2004–038 [which corresponds to FAA AD 2005–23–02] was issued to require the replacement of the ACT manhole cover and its seal in accordance with SB A320–28–1105, but this modification has proved not to be fully effective. Therefore, it is necessary to replace the seal material and to change the installation process in order to prevent such seal deformation and possibility of leakage.
>
> For the reasons described above, this [EASA] AD supersedes DGAC France AD F–2004–038 (EASA approval 2004–2110) and requires the replacement of the existing manhole seal with a new seal.

This AD also adds certain ACT equipped airplanes, produced after AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005) was issued, to the applicability. This AD also removes Model A320–111 airplanes from the applicability because there are no operational Model A320–111 airplanes in the United States and Airbus intends to remove this model from the EASA Type Certificate Data Sheet (TCDS). 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 have considered the comments received.

### Support for NPRM (76 FR 77934, December 15, 2011)

Thomas Hayden Barnes stated he supports efforts to ensure airline safety and the NPRM (76 FR 77934, December 15, 2011) appears reasonable.

US Airways stated it supports the intent of the NPRM (76 FR 77934, December 15, 2011).

### Request to Revise Cost Estimate

US Airways stated that accomplishment of the modification specified in Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009, will take 14.5 man-hours per fuel tank. We infer that the commenter wants the preamble section of the final rule changed to reflect 14.5 work-hours per fuel tank.

We agree. The total work-hours for accessing, modifying a fuel tank, and closing are estimated at 14.5 work-hours per fuel tank. We have changed the cost section in the final rule to reflect an estimate of 15 work-hours per fuel tank to comply with the new basic requirements of this AD. We have also revised the estimated cost of the AD on U.S. operators to be $919,275 (based on one fuel tank per airplane), or $1,275 per fuel tank.

### Request To Revise the Parts Cost Statement

US Airways requested we revise the parts cost statement of the NPRM (76 FR 77934, December 15, 2011) to include the parts cost for the actions required by AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005) and that are retained in the NPRM. The commenter stated that the parts costs are not covered under warranty.

We partially agree. Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005, states that Airbus will provide the material at no charge

for orders placed before December 31, 2003. Therefore, we agree that some operators may have had to pay for parts. We do not agree to add parts costs to this final rule, but we have added a statement to the cost section for actions that are required by AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005) and retained in this AD. 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.

**Request To Allow Seal Replacement Without ACT Removal**

US Airways requested the NPRM (76 FR 77934, December 15, 2011) be changed to allow installation of the seals without removing the ACTs from the airplane as specified in AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005). The commenter stated that in order to replace the seal on ACT number 2, only the integrated impact wall needs to be removed; and for seal replacement on ACT number 1, the ACT number 2 has to be rolled rearward approximately two feet to provide access to ACT number 1, which can then have its seal replaced without ACT removal. The commenter provided references to its internal documentation to support its request.

We disagree. US Airways request does not substantiate the detailed procedures needed for deviation from the Airbus recommended actions specified in Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009, for installation of seals on the ACT number 1 and ACT number 2. In addition, Airbus foresees a potential safety hazard for mechanics if seals are installed without removing the ACTs due to inadequate ventilation and high concentration of fuel vapor.

Under the provisions of paragraph (l) of this AD, we will consider requests for approval of alternate method of compliance (AMOC) if sufficient data are submitted to substantiate that deviation from the specified procedures in Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009, would provide an acceptable level of safety. We have not changed the AD in this regard.

**Explanation of Additional Changes Made to the AD**

We have revised the heading for paragraph (k) of this AD and the wording in paragraphs (h) and (k) of this AD; these changes have not changed the intent of those paragraphs.

**Conclusion**

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed, except for minor editorial changes and/or changes to the cost section that add the accessing and closing costs. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 77934, December 15, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 77934, December 15, 2011).

**Costs of Compliance**

Based on the service information, we estimate that this AD affects 721 products of U.S. registry.

The actions that are required by AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005) and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 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, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 15 work-hours per fuel tank to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. 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 the AD on U.S. operators to be $919,275, or $1,275 per fuel tank.

**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 regulation:*

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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 (76 FR 77934, December 15, 2011), 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 removing airworthiness directive (AD) 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005), and adding the following new AD:

**2012–09–12 Airbus:** Amendment 39–17047. Docket No. FAA–2011–1321; Directorate Identifier 2011–NM–045–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective June 21, 2012.

**(b) Affected ADs**

This AD supersedes AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005).

**(c) Applicability**

This AD applies to Airbus airplanes listed in paragraphs (c)(1), (c)(2), and (c)(3) of this AD; certificated in any category; all serial numbers; if equipped with one or more additional center tank(s) (ACT) with a part number (P/N) listed in table 1 of this AD. This AD does not apply to airplanes already having received Airbus modification 38036 in production.

(1) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

TABLE 1—AFFECTED ACT PART NUMBERS FOR APPLICABILITY

| | | | |
|---|---|---|---|
| D2827091100000 | D2827105100200 | D2827105300600 | D2827105500400 |
| D2827091100200 | D2827105100400 | D2827105300800 | D2827105500600 |
| D2827091100400 | D2827105100600 | D2827105400000 | D2827105500800 |
| D2827091100600 | D2827105100800 | D2827105400200 | D2827105600000 |
| D2827091100800 | D2827105200000 | D2827105400400 | D2827105600200 |
| D2827091101000 | D2827105200200 | D2827105400600 | D2827105600400 |
| D2827091300000 | D2827105200400 | D2827105400800 | D2827105600600 |
| D2827091300200 | D2827105200600 | D2827105401000 | D2827105600800 |
| D2827091300400 | D2827105200800 | D2827105401200 | D2827107500000 |
| D2827091300600 | D2827105300000 | D2827105401400 | D2827107500200 |
| D2827091300800 | D2827105300200 | D2827105500000 | D2827107500400 |
| D2827105100000 | D2827105300400 | D2827105500200 | D2827107500600 |

**(d) Subject**

Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Reason**

This AD was prompted by reports that the modification required by AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005), was not fully effective. We are issuing this AD to prevent fuel and/or vapor leakage, which could result in a combustible fuel vapor/air mixture in the cargo compartment, and consequent fire risk.

**(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) Retained Determination of Part Number With New Sealing Procedures**

This paragraph restates the requirements of paragraph (f) of AD 2005–23–02, Amendment 39–14350 (70 FR 69067, November 14, 2005), with new sealing procedures. Within 30 days (for Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes) or 12 months (for Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes) after December 19, 2005 (the effective date of AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005): Determine whether the P/N of each ACT installed on the airplane is included in table 2 of this AD. If no ACT installed on the airplane has a P/N included in table 2 of this AD, no further work is required by this paragraph.

TABLE 2—AFFECTED ACT P/NS FOR AD 2005–23–02, AMENDMENT 39–14360

[70 FR 69067, November 14, 2005]

| | | | |
|---|---|---|---|
| D2827091100000 | D2827105100200 | D2827105300400 | D2827105500200 |
| D2827091100200 | D2827105100400 | D2827105400000 | D2827105500400 |
| D2827091100600 | D2827105200000 | D2827105400200 | D2827105600000 |
| D2827091300000 | D2827105200200 | D2827105400400 | D2827105600200 |
| D2827091300200 | D2827105200400 | D2827105400600 | D2827105600400 |
| D2827091300400 | D2827105300000 | D2827105400800 | D2827107500000 |
| D2827105100000 | D2827105300200 | D2827105500000 | D2827107500200 |

**(h) Retained Manhole Cover/Seal Replacement**

This paragraph restates the requirements of paragraph (g) of AD 2005–23–02, Amendment 39–14350 (70 FR 69067, November 14, 2005). Within 30 days (for Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes) or 12 months (for Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, and –131 airplanes) after December 19, 2005 (the effective date of AD 2005–23–02, Amendment 39–14360 (70 FR 69067, November 14, 2005)): For each ACT P/N listed in table 2 of this AD: Before further flight, replace the outer ACT manhole cover with a reinforced manhole cover and replace the outer manhole cover seal with a new seal, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005. This paragraph provides credit for the replacements required by this paragraph if the replacements were performed before December 19, 2005, using Airbus Service Bulletin A320–28–1105, Revision 01, dated March 18, 2003; and Airbus Service Bulletin A320–28–1105, dated October 22, 2002. As of the effective date of this AD, doing the manhole cover seal replacement required by paragraph (i) of this AD, terminates the manhole cover seal replacement required by this paragraph.

**(i) ACT Modification**

Within 3,000 flight cycles or 24 months, whichever occurs first after the effective date of this AD: Modify the affected ACT listed in table 1 of this AD by replacing the manhole seal, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009. Accomplishing the manhole cover sealing replacement specified in this paragraph terminates the manhole

cover sealing replacement required in paragraph (h) of this AD.

**(j) Parts Installation**

As of the effective date of this AD, no person may install an ACT, having a part number is listed in table 1 of this AD, on any airplane unless it has been modified prior to its installation, in accordance with Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009.

**(k) Credit for Previous Actions**

This paragraph provides credit for the modification required by paragraph (i) of this AD, if the modification was performed before the effective date of this AD using Airbus Mandatory Service Bulletin A320–28–1162, dated February 6, 2008; or Revision 01, dated July 16, 2008.

**(l) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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.

**(m) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0177, dated August 30, 2010; Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009; and Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005; for related information.

**(n) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified.

(2) The following service information was approved for IBR as of the effective date of this AD:

(i) Airbus Mandatory Service Bulletin A320–28–1162, Revision 02, dated December 18, 2009.

(3) The following service information was approved for IBR on December 19, 2005 (70 FR 69067, November 14, 2005):

(i) Airbus Service Bulletin A320–28–1105, Revision 02, dated March 11, 2005.

(4) For Airbus service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(5) You may review copies of the 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.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 1, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–11490 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1327; Directorate Identifier 2011–NM–091–AD; Amendment 39–17048; AD 2012–09–13]**

**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 freighter series airplanes; Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. This AD was prompted by a report of corrosion found on the main fitting of the nose landing gear (NLG) leg in the vicinity of the dowel pin bushes retaining the lower steering flange. This AD requires modifying the NLG main fitting by adding primer paint to the cadmium around the dowel bush holes. We are issuing this AD to prevent NLG main fitting rupture, which could result in an NLG collapse.

**DATES:** This AD becomes effective June 21, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 21, 2012.

**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 December 29, 2011 (76 FR 81884). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion has been found on the main fitting of the NLG leg in the vicinity of the dowel pin bushes retaining the lower steering flange on A330/A340 aeroplanes. The majority of parts have been reworked and returned to service.
>
> This corrosion, if not avoided, could lead to the NLG main fitting rupture, possibly resulting in a NLG collapse, which would constitute an unsafe condition.
>
> In order to maintain the structural integrity of the NLG, this [EASA] AD requires the accomplishment of a modification which consists in adding primer paint to the cadmium around the dowel bush holes on the main fitting, in order to provide further protection against cadmium degradation.

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 (76 FR 81884, December 29, 2011) or on the determination of the cost to the public.

## Changes to the AD

Airbus has issued Mandatory Service Bulletins A330–32–3241 and A340–32–4282, both Revision 01, both including Appendix 01, both dated October 6, 2011, which correct certain aircraft maintenance manual references. We referred to Airbus Mandatory Service Bulletins A330–32–3241 and A340–32–4282, both dated November 26, 2010, as the appropriate sources of service information for doing the actions specified in the NPRM (76 FR 81884, December 29, 2011). We have updated paragraphs (g) and (j) of this AD to refer to Airbus Mandatory Service Bulletins A330–32–3241 and A340–32–4282, both Revision 01, both including Appendix 01, both dated October 6, 2011. We have also added new paragraph (h) to this AD to give credit for actions done before the effective date of this AD in accordance with Airbus Mandatory Service Bulletins A330–32–3241 and A340–32–4282, both dated November 26, 2010, and updated subsequent paragraph identifiers accordingly.

We also added a reference to Model A330–200 freighter series airplanes in paragraphs (g) and (h) of this AD.

## 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 (76 FR 81884, December 29, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 81884, December 29, 2011).

## Costs of Compliance

We estimate that this AD will affect 55 products of U.S. registry. We also estimate that it will take about 66 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 $10,000 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 $858,550, or $15,610 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 (76 FR 81884, December 29, 2011), 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:

**2012–09–13 Airbus:** Amendment 39–17048. Docket No. FAA–2011–1327, Directorate Identifier 2011–NM–091–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective June 21, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Model A330–223F, –243F, –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 airplanes on which Airbus modification 200616 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 of corrosion found on the main fitting of the nose landing gear (NLG) leg in the vicinity of the dowel pin bushes retaining the lower steering flange. We are issuing this AD to prevent NLG main fitting rupture, which could result in an NLG collapse.

**(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) Modification**

At the later of the times specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable: Modify the NLG main fitting by adding primer paint to the cadmium around the dowel bush holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3241, Revision 01, including Appendix 01, dated October 6, 2011 (for Model A330–200 and –300 airplanes, and Model A330–200 freighter series airplanes); or Airbus

Mandatory Service Bulletin A340–32–4282, Revision 01, including Appendix 01, dated October 6, 2011 (for Model A340–200 and –300 airplanes).

(1) Within 60 months since first flight of the NLG on any airplane.

(2) Within 60 months since first flight of the NLG on any airplane after the most recent overhaul of the NLG.

(3) Within 24 months after the effective date of this AD.

**(h) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–32–3241, dated November 26, 2010 (for Model A330–200 and –300 airplanes, and Model A330–200 freighter series airplanes); or A340–32–4282, dated November 26, 2010 (for Model A340–200 and –300 airplanes).

**(i) 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.

**(j) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0032, dated March 1, 2011, and the service information specified in paragraphs (j)(1) and (j)(2) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–32–3241, Revision 01, including Appendix 01, dated October 6, 2011.

(2) Airbus Mandatory Service Bulletin A340–32–4282, Revision 01, including Appendix 01, dated October 6, 2011.

**(k) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Airbus Mandatory Service Bulletin A330–32–3241, Revision 01, including Appendix 01, dated October 6, 2011.

(ii) Airbus Mandatory Service Bulletin A340–32–4282, Revision 01, including Appendix 01, dated October 6, 2011.

(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.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 1, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–11492 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0105; Directorate Identifier 2011–NM–123–AD; Amendment 39–17049; AD 2012–09–14]**

**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 airplanes. This AD was prompted by reports of fractured and missing latch pin retention bolts that secure the latch pins on the forward cargo door. This AD requires repetitive detailed inspections for fractured or missing latch pin retention bolts, replacement of existing titanium bolts with new Inconel bolts, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct fractured and missing latch pin retention bolts, which could result in potential separation of the cargo door from the airplane and catastrophic decompression of the airplane.

**DATES:** This AD is effective June 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 21, 2012.

**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; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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:** Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6590; email: *ana.m.hueto@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 February 8, 2012 (77 FR

6522). That NPRM proposed to require repetitive detailed inspections for fractured or missing latch pin retention bolts, replacement of existing titanium bolts with new Inconel bolts, and related investigative and corrective actions if necessary.

**Comments**

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. Boeing and American Airlines support the NPRM (77 FR 6522, February 8, 2012).

**Conclusion**

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

We estimate that this AD affects 148 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 |
|---|---|---|---|---|
| Inspection | 1 work-hour × $85 per hour = $85 | $0 | $85 | $12,580 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Cross-bolt replacement | 2 work-hours × $85 per hour = $170 | $50 | $220 |

**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):

**2012–09–14 The Boeing Company:** Amendment 39–17049; Docket No. FAA–2012–0105; Directorate Identifier 2011–NM–123–AD.

**(a) Effective Date**

This AD is effective June 21, 2012.

**(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 Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 52, Doors.

**(e) Unsafe Condition**

This AD was prompted by reports of fractured and missing latch pin retention bolts that secure the latch pins on the forward cargo door. We are issuing this AD to detect and correct fractured and missing latch pin retention bolts, which could result in potential separation of the cargo door from the airplane and catastrophic decompression of the airplane.

**(f) Compliance**

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

**(g) Inspect Retention Bolt of Latch Pin Fittings No. 1 Through No. 8**

At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, except as specified in paragraph (i) of this AD: Do a detailed inspection for fractured and/or

missing latch pin retention bolts of the latch pin fittings of the lower sill of the forward large cargo door, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, except as provided by paragraph (h) of this AD. Do all applicable related investigative and corrective actions at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010. Repeat the inspection thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, except as specified in paragraph (j) of this AD.

**(h) Repair**

If any cut, crack, or damage is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the cut, crack, or damage in accordance with a method approved by the Manager, Seattle, Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(i) Exception to Compliance Time**

Where Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

**(j) Optional Terminating Action for Repetitive Inspections**

Replacing latch pin retention bolts made of titanium with new Inconel bolts, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010, terminates the repetitive inspections required by paragraph (g) of this AD at Stations 509.10, 522.75, 537.50, 554.30, 562.90, 579.70, 591.25, and 604.90, latch pin fittings No. 1 through No. 8.

**(k) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Seattle ACO, 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.

**(l) Related Information**

For more information about this AD, contact Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6592; fax: 425–917–6590; email: *ana.m.hueto@faa.gov*.

**(m) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information:

(i) Boeing Alert Service Bulletin 777–52A0038, Revision 1, dated June 24, 2010.

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

(3) 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.

(4) You may also review copies of the 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 May 4, 2012.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–11463 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0218; Directorate Identifier 2012–CE–003–AD; Amendment 39–17051; AD 2012–10–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Hawker Beechcraft Corporation Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Models 58 and G58 airplanes. This AD was prompted by installation of oversized clamps on fuel vapor return and/or fuel vent lines in the outboard sections of the left and right wings. This AD requires inspecting for oversized or deformed fuel hose clamps and replacing as necessary. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective June 21, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 21, 2012.

**ADDRESSES:** For service information identified in this AD, contact Hawker Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@hawkerbeechcraft.com;* or Internet: *http://www.hawkerbeechcraft.com/customer_support/technical_and_field_support/.* 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.

### 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:** Thomas Teplik, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 329–4090; email: *thomas.teplik@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 March 2, 2012 (77 FR 12757). That NPRM proposed to require

inspection for oversized or deformed fuel hose clamps and replacement as necessary because of reports we have received of installation of oversized clamps on fuel vapor return and/or fuel vent lines in the outboard sections of the left and right wings. This condition, if not corrected, could result in leakage of fuel or vapor in areas where electrical wiring and other potential ignition sources are present, which could lead to an inflight fire.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM 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 (77 FR 12757, March 2, 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 12757, March 2, 2012).

**Costs of Compliance**

We estimate that this AD affects 244 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 |
|---|---|---|---|---|
| Defueling, inspection of the fuel hose clamps, and refueling. | 3.5 work-hours × $85 per hour = $297.50. | Not applicable ..... | $297.50 | $72,590 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement of fuel hose clamps (Cost represents replacement of a maximum of 20 clamps depending on airplane configuration). | 3 work-hours × $85 per hour = $255 ..... | $20 | $275 |

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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):

**2012–10–02 Hawker Beechcraft Corporation:** Amendment 39–17051; Docket No. FAA–2012–0218; Directorate Identifier 2012–CE–003–AD.

**(a) Effective Date**

This AD is effective June 21, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to the following Hawker Beechcraft Corporation airplanes that are certificated in any category:

(i) Model 58, serial numbers TH–1931 through TH–2124, and

(ii) Model G58, serial numbers TH–2125 through TH–2281, TH–2283, and TH–2284.

**(d) Subject**

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28; fuel.

**(e) Unsafe Condition**

This AD was prompted by installation of oversized clamps on fuel vapor return and/ or fuel vent lines in the outboard sections of the left and right wings. We are issuing this AD to correct the unsafe condition on these products.

**(f) Compliance**

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

**(g) Inspection**

Within the next 50 hours time-in-service after June 21, 2012 (the effective date of this AD) or within the next 6 calendar months after June 21, 2012 (the effective date of this AD), whichever occurs first, inspect the fuel hose clamps for oversized or deformed clamps following Hawker Beechcraft Mandatory Service Bulletin No. SB 28–4039, Revision 1, dated October 2011.

**Note 1 to paragraph (g) of this AD:** If you have a scheduled inspection before the compliance time of this AD, the FAA recommends you comply with this AD at that time.

**(h) Replacement**

If any oversized or deformed clamps are found during the inspection required in paragraph (g) of this AD, before further flight, replace the clamps following Hawker Beechcraft Mandatory Service Bulletin No. SB 28–4039, Revision 1, dated October 2011.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(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.

**(j) Related Information**

For more information about this AD, contact Thomas Teplik, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 329–4090; email: *thomas.teplik@faa.gov*.

**(k) Material Incorporated by Reference**

(1) You must use Hawker Beechcraft Mandatory Service Bulletin No. SB 28–4039, Revision 1, dated October 2011, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@hawkerbeechcraft.com;* or Internet: *http://www.hawkerbeechcraft.com/customer_support/technical_and_field_support/.*

(3) 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.

(4) You may also review copies of the 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 May 9, 2012.

**Earl Lawrence,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2012–11812 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 522, and 558

**[Docket No. FDA–2012–N–0002]**

## New Animal Drugs; Ceftiofur Sodium; Lincomycin Powder; Naracin; Tylosin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during March 2012. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

**DATES:** This rule is effective May 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, email:*george.haibel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** FDA's Center for Veterinary Medicine (CVM) is adopting use of a monthly **Federal Register** document to codify approval actions for NADAs and abbreviated ANADAs. CVM will no longer publish a separate rule for each action. This approach will allow a more efficient use of available resources.

In this document, FDA is amending the animal drug regulations to reflect the original and supplemental approval actions during March 2012, as listed in table 1 of this document. FDA is also informing the public of the availability of environmental review documents required under the National Environmental Policy Act (NEPA), where applicable. For actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA) may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING MARCH 2012

| NADA/ ANADA | Sponsor | New animal drug product name | Action | 21 CFR Section | FOIA summary | NEPA review |
|---|---|---|---|---|---|---|
| 118–980 ... | Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285. | MONTEBAN (narasin) Type A medicated article. | Supplement increasing the upper dose limit for narasin in broiler feed. | 558.363 | Yes ..... | Environmental assessment (EA)/Finding of no significant impact (FONSI). |
| 111–636 ... | Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017. | LINCOMIX (lincomycin hydrochloride) Soluble Powder. | Supplement adding an indication for control of American foulbrood in honey bees. | 520.1263c | Yes ..... | Categorically excluded (CE).[1] |
| 200–421 ... | Hospira, Inc., 275 N. Field Dr., Lake Forest, IL 60045. | Ceftiofur for Injection (ceftiofur sodium) Sterile Powder. | Original approval of generic copy of NADA 140–338. | 522.313c | Yes ..... | CE. |
| 200–455 ... | Cross Vetpharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland. | TYLOMED–WS (tylosin tartrate) Soluble Powder. | Supplement adding an indication for control of porcine proliferative enteropathies. | 520.2640 | Yes ..... | CE.[1] |
| 200–473 ... | Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria. | TYLOVET Soluble (tylosin tartrate). | Supplement adding an indication for control of porcine proliferative enteropathies. | 520.2640 | Yes ..... | CE.[1] |

[1] The Agency has determined under 21 CFR 25.33 that this action is CE from the requirement to submit an EA or an environmental impact statement (EIS) because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

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

**List of Subjects**

*21 CFR Part 510*

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

*21 CFR Parts 520 and 522*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''Hospira, Inc.''; and in the table in paragraph (c)(2), numerically add an entry for ''000409'' to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045 | 000409 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 000409 ..... | Hospira Inc., 275 North Field Dr., Lake Forest, IL 60045. |
| * * * * * | |

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 4. In § 520.1263c, revise paragraph (b) and add paragraph (d)(3) to read as follows:

**§ 520.1263c Lincomycin powder.**

* * * * *

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 000009 for use as in paragraph (d) of this section.

(2) Nos. 046573, 054925, 061623, and 076475 for use as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

(d) * * *

(3) *Honey bees*—(i) *Amount.* Mix 100 milligrams lincomycin with 20 grams confectioners'/powdered sugar and dust over the top bars of the brood chamber once weekly for 3 weeks.

(ii) *Indications for use.* For the control of American foulbrood (*Paenibacillus larvae*).

(iii) *Limitations.* The drug should be fed early in the spring or late in the fall and consumed by the bees before the main honey flow begins to avoid contamination of production honey. Complete treatments at least 4 weeks before main honey flow.

■ 5. In § 520.2640, revise paragraph (b) introductory text to read as follows:

**§ 520.2640 Tylosin.**

* * * * *

(b) *Sponsors.* See Nos. 000986, 016592, and 061623 in § 510.600(c) of this chapter.

* * * * *

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 7. In § 522.313c, revise paragraphs (b), (e)(2)(ii), (e)(3)(ii), (e)(4)(ii), and (e)(8)(i) to read as follows:

**§ 522.313c Ceftiofur sodium.**

* * * * *

(b) *Sponsors.* See Nos. 000009, 000409, and 068330 in § 510.600(c) of this chapter.

* * * * *

(e) * * *

(2) * * *

(ii) *Indications for use.* For treatment of bovine respiratory disease (shipping fever, pneumonia) associated with *Mannheimia haemolytica, Pasteurella multocida,* and *Histophilus somni.* Also, for the treatment of acute bovine interdigital necrobacillosis (foot rot, pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus.*

* * * * *

(3) * * *

(ii) *Indications for use.* For treatment of sheep respiratory disease (sheep pneumonia) associated with *Mannheimia haemolytica* and *Pasteurella multocida.*

* * * * *

(4) * * *

(ii) *Indications for use.* For treatment of caprine respiratory disease (goat pneumonia) associated with *Mannheimia haemolytica* and *Pasteurella multocida.*

* * * * *

(8) * * *

(i) *Amount.* 1.0 mg/lb (2.2 mg/kg) body weight by subcutaneous injection. Treatment should be repeated at 24-hour intervals for 5 to 14 days.

* * * * *

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

■ 9. In § 558.363, revise paragraph (d)(1)(i) introductory text to read as follows:

**§ 558.363 Narasin.**

* * * * *

(d) * * *

(1) * * *

(i) *Amount per ton.* Narasin, 54 to 90 grams.

* * * * *

Dated: May 7, 2012.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2012–11937 Filed 5–16–12; 8:45 am]

BILLING CODE 4160–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[EPA–HQ–OAR–2009–0277; FRL–9668–3]**

**RIN 2060–AQ83**

## Protection of Stratospheric Ozone: The 2012 Critical Use Exemption From the Phaseout of Methyl Bromide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is authorizing uses that qualify for the 2012 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2012. EPA is taking this action under the authority of the Clean Air Act to reflect a recent consensus decision by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Second Meeting of the Parties.

**DATES:** This rule is effective on May 17, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0277. All documents in the docket are listed on the *www.regulations.gov* web site. 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, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742).

**FOR FURTHER INFORMATION CONTACT:** For further information about this rule, contact Jeremy Arling by telephone at (202) 343–9055, or by email at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also visit the methyl bromide section of the ozone layer protection Web site at *www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other stratospheric ozone protection regulations, the science of ozone layer depletion, and related topics.

**SUPPLEMENTARY INFORMATION:** This rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2012. Under the Clean Air Act, methyl bromide consumption and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. Consumption is defined under the CAA as production plus imports minus exports. With this action, EPA is authorizing the uses that qualify for the 2012 critical use exemption as well as specific amounts of methyl bromide that may be produced and imported, or sold from pre-phaseout inventory (also referred to as ''stocks'') for critical uses in 2012.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 17, 2012. APA section 553(d) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' Section 5 U.S.C. 553(d)(1) allows an effective date less than 30 days after publication for a rule that ''that grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). Since today's action can be considered to either grant an exemption for limited critical uses during 2012 from the general

prohibition on production or import of methyl bromide after the phaseout date of January 1, 2005, or relieve a restriction that would otherwise prevent production or import of methyl bromide, EPA is making this action effective immediately upon publication.

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## I. General Information

### *A. Regulated Entities*

Entities and categories of entities potentially regulated by this action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2012 critical use exemption including growers of vegetable crops, fruits, and nursery stock, and owners of stored food commodities and structures such as grain mills and processors. This rulemaking does not affect applicants for future control periods.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

## II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this rule implementing Title VI of the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this rule must comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when producing, importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide. The provisions in this action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

## III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the U.S. could satisfy its obligations under the Montreal Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Montreal Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties agreed to adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for developing (Article 5) countries.

## IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to align the U.S. phaseout of methyl bromide with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a rule (the ''Framework Rule'') that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA has subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2011. Under the authority of section 604(d)(6) of the CAA, this action authorizes the uses that qualify as approved critical uses in 2012 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This action reflects Decision XXII/6, taken at the Twenty-Second Meeting of the Parties in November 2010. In accordance with Article 2H(5) of the Montreal Protocol, the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this rule on critical uses for 2012, EPA is honoring commitments made by the United States in the Montreal Protocol context.

## V. What is the critical use exemption process?

### *A. Background of the Process*

Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties in 1997 the Parties agreed to criteria for the exemption, as contained in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' EPA promulgated these criteria in the definition of ''critical use'' at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 20, 2009 (74 FR 23705), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives, and efforts to minimize use and emissions.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of the U.S. Government's critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide. EPA also provides an opportunity for public comment on the amounts of methyl bromide that the agency is proposing to exempt for critical uses and the uses that the agency is proposing as approved critical uses.

Additional information on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America,'' contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 22, 2010, the U.S. Government (USG) submitted the eighth CUN to the Ozone Secretariat of the UNEP. This nomination contained the request for 2012 critical uses. In February 2010, MBTOC sent questions to the USG concerning technical and economic issues in the 2012 nomination. The USG transmitted

responses to MBTOC in March, 2010. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and allocation amounts reflect the analysis contained in those documents.

*B. How does this rule relate to previous critical use exemption rules?*

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

An approved critical user may purchase methyl bromide produced or imported with critical use allowances (CUAs) as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses. Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), 75 FR 23167 (calendar year 2010), and 76 FR 60736 (calendar year 2011).

Today's action uses the existing regulatory framework to determine critical uses for 2012 and the amounts of critical use allowances (CUAs) and critical stock allowances (CSAs) to be allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kilogram (kg) of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from the remaining inventory of material produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

*C. Stocks of Methyl Bromide*

The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2011 was 1,802,715 kg. As in prior years, the Agency continues to closely monitor CUA and CSA data. As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses.

As explained in the 2008 CUE Rule, EPA intends to continue releasing the aggregate methyl bromide stockpile data reported under the requirements at 40 CFR 82.13 for the end of each control period. If the number of competitors in the industry were to decline appreciably, EPA may revisit the question of whether the aggregate is entitled to treatment as confidential business information and whether to release the aggregate without notice. EPA did not propose to change the treatment of submitted information but welcomes relevant information concerning the composition of the industry. EPA did not receive any information suggesting that the number of companies has declined to the point that EPA should consider treating the aggregate as confidential information. The aggregate information for 2003 through 2011 is available in the docket for this rulemaking.

*D. Critical Uses*

In Decision XXII/6, taken in November 2010, the Parties to the Protocol agreed ''to permit, for the agreed critical-use categories for 2012 set forth in table C of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2012 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *'' The following uses are those set forth in table C of the annex to Decision XXII/6 for the United States:

- Commodities
- National Pest Management Association food processing structures
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruits, nuts, flowers
- Orchard replants
- Ornamentals
- Peppers—field
- Strawberry—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and information regarding any changes to the registration (including cancellation or new registrations), use, or efficacy of alternatives that have transpired after the 2012 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE.

EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' change. EPA received one comment urging the agency to consider greater use of 1,3–D and sulfuryl fluoride than contained in the technical analysis. This comment repeats a comment submitted by the same commenter on the 2010 CUE Rule but does not provide any new data. EPA has considered the commenter's concerns and believes that response contained in the 2010 CUE Rule response to comments, which is available in the docket to this rule, still appropriately addresses this comment.

EPA proposed to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXII/6. EPA is finalizing the lists of critical uses and critical users as proposed. First, EPA is removing from the list of approved critical users two users that did not submit applications for 2012 and therefore were not included in the U.S. nomination. These users are International Paper and Weyerhaeuser Company in the forest nursery seedlings sector and beans in the commodities sector.

Second, EPA is removing North Carolina and Tennessee strawberry nurseries from the list of approved

critical users. Southeast strawberry growers applied for a critical use in 2012. The U.S. did not submit a nomination to UNEP for this use in this geographical location because EPA's technical review found that there are alternatives to methyl bromide for Southeast strawberry nurseries.

Third, EPA is limiting the scope of the approved critical use for the National Pest Management Association's (NPMA) post harvest fumigations. In past control periods, the scope of the NPMA food processing critical use included ''processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.'' MBTOC found that the nomination for food processing facilities was inadequately justified and recommended only cheese storage facilities for consideration by the Parties as a critical use. MBTOC's comments can be found in the May 2010 TEAP Progress Report in the docket to this rule. The Parties' Decision reflects the MBTOC recommendation. EPA is modifying the NPMA critical use to include only ''Members of the National Pest Management Association treating cheese storage facilities.''

EPA did not receive any comments objecting to the proposed modifications to the table in 40 CFR part 82, subpart A, appendix L. EPA received three comments agreeing that the proposed critical uses have a continuing need for access to methyl bromide under a 2012 CUE. One commenter stated that the strict application and review process properly limits the use of methyl bromide, given its effect on the stratospheric ozone layer. EPA also received comment that there should be no uses of methyl bromide given its toxicity and effect on the stratospheric ozone layer. EPA disagrees that all methyl bromide use should stop. The CUN addresses the need for methyl bromide for the 2012 critical uses. In addition, the 2012 critical uses were reviewed by the technical bodies to the Ozone Secretariat and authorized by the Parties to the Montreal Protocol. Concerns about the toxicity of methyl bromide are addressed through the pesticide registration program under FIFRA, as well as other authorities, and are outside the scope of this rulemaking. EPA also received one comment questioning some of the limiting critical conditions. This commenter has raised the same points in past CUE rulemakings and EPA believes our responses from past rulemakings, which are included in the docket for this rule, remain appropriate.

EPA is repeating the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

*E. Critical Use Amounts*

Table C of the annex to Decision XXII/6 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the total authorization for 2012 is 1,022,826 kg, which is equivalent to 4.0% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of new production or import authorized by the Parties is 922,826 kg (3.6% of baseline) as set forth in Table D of the annex to Decision XXII/6. The difference between the total authorization and the authorized amount of new production is 100,000 kg (0.4% of baseline), which is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory on critical uses.

EPA is finalizing the amount of new production and import discussed in the proposed rule. With this final rule, EPA is allocating 759,744 kg (3.0% of baseline) of new production and import of methyl bromide for critical uses for 2012. EPA is also allocating 263,082 kg (1.0% of baseline) in the form of critical stock allowances for sale of pre-phaseout inventory for critical uses in 2012.

In the proposed rule, EPA used the methodology established in the 2008 CUE Rule to determine the level of ''available stocks,'' from which the CSAs are calculated. At the time of the proposed rule, EPA estimated that 263,082 kg of pre-phaseout inventory would be ''available'' for use in 2012. Therefore, EPA proposed allocating 263,082 kg of critical stock allowances for 2012. Using the calculation described in the proposed rule, EPA then proposed a CUA amount of 759,744 kg.

Due to the timing of the 2012 CUE rulemaking, EPA issued a No Action Assurance letter December 21, 2011. This letter allowed critical use allowance holders to continue producing and importing methyl bromide beyond December 31, 2011, in the absence of allowances, subject to certain conditions. The No Action Assurance allows for the production and import of 379,872 kg and the sale of 131,541 kg from pre-phaseout inventory for critical uses. The No Action Assurance levels were half the amounts contained in the proposed rule to allow for changes to the final rule after new inventory data were received.

At the end of February, distributors reported to EPA the amount of pre-phaseout inventory that was still under their ownership as of December 31, 2011. These data show that the pre-phaseout inventory was greater than the estimates that formed the basis of the CSA and CUA amounts in the proposed rule. In the proposed rule, EPA estimated that the inventory would decline to 692,082 kg at the end of 2011. The reported data show that the remaining inventory was actually 1,248,876 kg.

The amount of inventory drawdown was so low compared to EPA's estimates in the proposed rule that if EPA were to apply the framework calculation detailed in the proposed rule to the new data, the new production levels would be less than what is allowed under the No Action Assurance (these calculations are available in the docket for this rulemaking). The No Action Assurance allows for the production and import of 379,872 kg and the sale of 131,541 kg from pre-phaseout inventory for critical uses. Under the framework calculation based on new inventory data, the allocation would be 202,950 kg of new production/import and 819,876 kg of inventory.

Hence, EPA is not finalizing a critical use allocation of 202,950 kg for 2012. This amount would be below what is currently allowed for production/import in the No Action Assurance letter. Regulated entities have been acting on the amounts in the No Action Assurance letter in good faith, and may have already produced up to the allowed level. In addition, EPA never determined that the No Action Assurance levels for CUAs and CSAs would be sufficient for an entire year. When this situation occurred during the development of the 2011 CUE Rule, EPA finalized the new production amount allowed under the No Action Assurance and allocated CSAs up to the full level authorized by the Parties. Were EPA to follow this approach in this 2012 Rule, EPA would finalize 379,872 kg of new production and import and 819,876 kg of critical stock allowances. For the reasons discussed below, EPA is not following this approach but rather is finalizing the amounts discussed in the proposed rule.

An allocation of 202,950 kg, or even 379,872 kg (i.e., an amount consistent with the No Action Assurance) for new production and import would be substantially less than the amount proposed, which was 759,744 kg. These circumstances are substantially different from the 2011 rule, when EPA proposed to authorize 1,500,000 kg of new production, and issued a No Action Assurance for that same amount of new production. While EPA provided the public with an explanation of how it calculated its proposed authorization for CUE, and noted that it might adjust those calculations with new data, EPA believes the results of the methodology using the updated data now available are sufficiently different that additional notice and the opportunity to comment would be warranted before using that data as the basis for a final CUE authorization. At the same time, EPA recognizes that regulated entities, including manufacturers and critical users of methyl bromide, are in need of a final CUE rule for calendar year 2012. EPA did not propose, and is not considering, a total authorization of less than 1,022,826 kg for critical uses in 2012. EPA has weighed the benefit of re-opening for comment the allocation of the total authorization between critical use allowances and critical stock allowances against the time-sensitive need for a CUE authorization for the current calendar year and concluded that re-opening the allocation for comment is not warranted. Accordingly, EPA is finalizing its proposed allocations of 759,744 kg of critical use allowances and 263,082 kg of critical stock allowances for 2012.

EPA received a comment that the calculation mistakenly used the CSA allocation amount from the proposed 2011 CUE rule, not the final rule. When EPA was developing the proposed 2012 rule, the 2011 rule was still not finalized. EPA assumed that the final 2011 rule would allocate 482,333 kg but it actually allocated 555,200 kg of CSAs. The commenter requests that the estimated drawdown calculation be updated. EPA agrees with the commenter that EPA would have used the value from the final 2011 rule, had it been available when EPA was developing the proposed 2012 rule. EPA has used the updated CSA value from the final 2011 rule, as well as updated inventory information, in calculating how the formula used in the proposal would allocate the CUE authorization. However, as noted above, EPA is not basing the allocation in this final rule on that formula.

One commenter objected to EPA's proposal to allocate 759,744 kg for new production or import. The commenter stated that the Parties authorized 922,826 kg for new production and import and that it is arbitrary and capricious for the agency to allocate any amount less than that level of new production. EPA disagrees with the commenter's interpretation of Decision XXII/6. In Table D of Decision XXII/6, the Parties authorized 922,826 kg for new production and import ''minus available stocks.'' Thus, EPA does not believe it would be consistent with Decision XXII/6 to authorize 922,826 kg for new production and import without considering available stocks. Furthermore, EPA notes, consistent with our position in prior rulemakings, that the Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to ''permit'' a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency ''may'' create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is ''available'' for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXII/6 states that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks.'' In addition, earlier decisions refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXII/6 further reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

One commenter objects to the use of a supply chain factor in determining an amount of ''available stocks'' that can be used by critical users and requests that EPA require that the inventory be exhausted before allowing any additional new production. The commenter also states that the calculation of the supply chain factor is overly conservative because it assumes a catastrophic loss when production is at the peak. EPA has addressed this comment in prior rulemakings; those responses are available in the docket for this rulemaking.

Another commenter stated that the CSA allocation failed to consider the effect that drawing down the pre-phaseout inventory would have if there is a catastrophic failure in the domestic supply of methyl bromide in future years. EPA believes that the calculation of the supply chain factor (which reflects the level of authorized CUE use as it declines) was adequate consideration of the possibility of a future catastrophic interruption in the domestic supply of methyl bromide. Although EPA is not relying on calculation of a supply chain factor and the formula it proposed to use to allocate CSAs in this final rule, EPA notes that the CSA allocation is lower under this final rule than if EPA had relied on that formula, because more methyl bromide remains in pre-phaseout inventory than anticipated.

Unlike past control periods, all critical use methyl bromide that companies reported to be produced or imported in 2010 was sold to end users. The information reported to EPA is that 1,954,610 kg of critical use methyl bromide was produced or imported. A slightly higher amount than the amount produced or imported was actually sold to end-users in 2010. This additional amount was from distributors selling amounts that were carried over from the 2009 control period. Thus, EPA did not propose to apply any carryover deduction to the new production amount for 2012.

One commenter suggested that the lack of a carryover demonstrates excess demand and that EPA should therefore increase the amount of newly produced or imported material. EPA responds that the agency expects material produced or imported for use in a particular control period to be used in that control period and that there typically should not be a carryover. EPA established the carryover reduction to account for an over allocation or underuse of allowances in a particular control period and avoid any stockpiling of critical use material.

The absence of a carryover does not mean that the agency should increase the allocation. EPA's carryover calculation is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. All past U.S. Accounting Frameworks for the methyl bromide critical use exemption are available in the public docket for this rulemaking.

EPA considers new data about alternatives that were not available at the time the U.S. Government submitted the CUN to the Parties and adjusts the allocation for new production and import accordingly. Two alternatives not considered in the 2012 CUN, which was submitted to UNEP in January 2010, may be used in limited quantities in 2012. EPA proposed to not adjust the allocation considering that the uptake of these two alternatives (iodomethane and DMDS) is expected to be minimal in 2012. One commenter agreed that the uptake will be practically nonexistent.

In July 2010, EPA registered Dimethyl Disulfide (DMDS) to control nematodes, weeds, and pathogens in tomatoes, peppers, eggplants, curcurbits, strawberries, ornamentals, forest nursery seedlings, and onions. Twenty-four states have now registered DMDS and registrations are pending in four other states. Even though DMDS is registered in states that grow critical use crops, EPA believes that the uptake of this alternative will be minimal in 2012. Use in the 2011 growing season was small because the product was either not registered in the state or the distribution system was still under development. Furthermore, the manufacturer of DMDS, Arkema, has stated that they are limiting the roll-out of this alternative to ensure proper applicator training and use of odor mitigation practices. As stated in the proposed rule, EPA continues to anticipate that growers will use the 2012 growing season to test the fumigant on limited acreage. Therefore, EPA is not reducing the allocation of allowances based on the uptake of DMDS in 2012.

Second, California registered iodomethane in December of 2010. EPA is unable to estimate uptake of iodomethane in California during 2012 due to uncertainties created by the California label. Specifically, the California label has larger buffer zones and lower use rates than the federal label. EPA does not have efficacy studies at the California label's lower use rates and is uncertain how widely it will be adopted without that data. In addition to the state registration, County Agricultural Commissioners must permit each iodomethane application that occurs within their jurisdiction.

One commenter stated that EPA should not be allocating fewer CUEs than the amount authorized by the Parties given EPA's January 19, 2011, proposal to revoke the tolerances established for sulfuryl fluoride under section 408 of the Federal Food, Drug, and Cosmetic Act (76 FR 3422). This rule is based on the current status of alternatives and is limited to 2012. The proposed tolerance revocation rule includes a staggered implementation scheme so that it is unlikely that any specific revocation will be effective as soon as 2012 (76 FR 3447). Therefore, EPA has not based the allocation amounts for 2012 on any anticipated impacts of that proposal on methyl bromide use.

EPA did not propose to take any other reductions because the 2012 CUN properly applied transition rates for all other alternatives. The TEAP report of October 2010 included reductions in its recommendations for critical use categories based on the transition rates in the 2012 CUN. The TEAP's recommendations were then considered in the Parties' 2012 authorization amounts, as listed in Decision XXII/6. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2012 critical use amounts. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

EPA also took comment on an issue raised in the proposed 2011 CUE rule. In that rulemaking, EPA proposed a critical-use allowance allocation of 1,500,000 kg for 2011, given that regulated entities had been acting in good faith on statements made by the agency in a No Action Assurance letter that producers and importers could assume the final allocation would be at least that much. While the total allocation was not affected, the amount of new production was 128,382 kg more than what EPA would have allocated for 2011 had the CSA and CUA amounts been based on the ''available stocks'' calculation using end of year inventory data. It also means that the critical stock allocation was 128,382 kg less than the amount of ''available stocks.'' EPA stated in the 2011 proposed rule that the Agency could reduce critical-use allowances for new production and import in the 2012 allocation rule to account for this difference.

EPA took comment on an alternative approach in which EPA would allocate 631,362 kg (2.5% of baseline) of CUAs for 2012. This amount is 128,382 kg less than the proposed CUA amount. The CSA amount could remain either at 263,082 kg or be increased to 391,464 kg to reflect the lower CSA allocation in 2011. The total allocation for 2012 would be 894,444 kg or 1,022,826 kg depending on how many CSAs are issued under this alternative. EPA did not propose this alternative as the lead approach because the number of CUAs in the 2011 rule did not exceed the Parties' production authorization for 2011 and the total CUE amount for 2011 was unaffected. EPA received one comment in opposition to this approach. The commenter states that the 2011 CUA allocation was proper because it maintained consistency with the No Action Assurance letter and that any ''over allocation'' in 2011 will self-correct in future rules. First, any additional new production would reduce the need to use CSAs, which will result in more ''available stocks'' in next year's CUE calculation and therefore a higher CSA allocation. Second, any unused allocation will be captured in EPA's calculation of carryover. After considering this issue, EPA is not finalizing the alternative allocation approach in the final rule.

EPA received one comment that the rulemaking process typically is not completed in a timely manner. Methyl bromide producers, importers, and distributers need advance notice of their allowances to ensure material can be manufactured or imported and ultimately distributed to growers to meet spring fumigation schedules. The commenter requests that EPA develop a more efficient process to promulgate the critical use rule so that it is in effect before the control period begins. EPA notes that the Parties to the Montreal Protocol take their decision to authorize critical uses typically a year before the control period at issue. This schedule, coupled with the Clean Air Act section 604(d)(6) requirement to provide notice and the opportunity for public comment, makes it difficult for EPA to complete the rule in advance of the control period, since the Decisions of the Parties are central to the development of the rule. However, EPA acknowledges that promulgating the rule after the start of the control period is not ideal. EPA will consider means of streamlining the Critical Use Exemption rulemaking in the future so that the rule can be issued prior to the start of the control period.

*F. Critical Use Allowance Allocations*

EPA is allocating critical use allowances for new production or import of methyl bromide up to the amount of 759,744 kg (3.0% of baseline) as shown in the table in 40 CFR 82.8(c)(1). These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Paragraph 3 of Decision XXII/6 states ''that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in prior Decisions authorizing critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis. EPA's Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties.

One commenter states that EPA should allocate specifically to each of the Critical Use Categories as authorized by the Parties. The EPA's ''lump sum'' approach, the commenter asserts, does not guarantee that critical users have access to methyl bromide and it instead allows those with the greatest ability to pay to garner methyl bromide away from other users with approved critical needs. Furthermore, developers of methyl bromide alternatives need assurance that methyl bromide will eventually exit a particular use segment. Allowing an open market for methyl bromide allocation is an economic disincentive for anyone developing alternatives. At a minimum, this commenter supports distinguishing between pre-plant and post-harvest sectors as EPA currently does. EPA received a separate comment favoring the universal allocation approach over a sector-specific allocation. The commenter states that by allocating up to 14 types of allowances the sector specific approach would be overly complex to administer, would create problems for distributors, and would spread allowances among too many producer/importers and distributors. EPA has addressed these comments in prior rulemakings; those responses are available in the docket for this rulemaking.

For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the agency believes that under the universal allocation approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

*G. Critical Stock Allowance Allocations*

The 2004 Framework Rule (69 FR 52366) established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, the Framework Rule further took pre-phaseout inventories into account through the trading provisions that allow CUAs to be converted into CSAs.

A preambular paragraph to Decision XXII/6 states ''that parties should reduce their stocks of methyl bromide retained for employment in critical-use exemptions to a minimum in as short a time period as possible.'' EPA notes that the U.S. Government does not retain pre-phaseout inventory. Pre-phaseout inventory is held by private companies that may sell or distribute it for any use that meets the labeling under FIFRA, whether critical or not. EPA believes it is responsibly managing the stocks of pre-phaseout inventory through the CUE authorization process. Prior rulemakings have generally allocated higher amounts from stocks than the minimum set forth in the Parties' decisions. Through the careful management, aggregate amounts have been reduced by 93% since the end of 2003. In addition, EPA has undertaken a broader use of its regulatory authorities under FIFRA to progressively limit U.S. domestic use of stocks to critical uses. While it is not possible to predict the exact date by which all remaining pre-2005 inventory will be exhausted, under the FIFRA process any small remaining quantities in 2015 will likely be entirely devoted to uses that have been identified as critical under the process developed since 2005 to address critical needs of developed countries. EPA is allocating CSAs for the 2012 control period in the amount of 263,082 kg (1.0% of baseline). This is more than the difference between the total U.S. CUE amount approved by the Parties and the permitted level of U.S. production and consumption. For 2012, that difference is 100,000 kg (0.4% of baseline).

One commenter stated that the Agency is incorrect to assume that 263,082 kg of pre-phaseout inventory will be available for critical uses in 2012. Instead, the commenter stated that EPA should allocate only 100,000 kg from stocks. The commenter says that the distributors that own stocks are free to sell them for any purpose, including for non-CUE uses, and that EPA cannot control how or whether inventory is sold. EPA agrees that the allocation system allows distributors of inventory to respond to market conditions instead of requiring them to sell inventory to critical users. EPA issues CSAs as a mechanism to track the use of stocks for critical uses. Under section 82.4(p), stocks may not be sold for use on critical uses if the seller does not hold the corresponding amount of CSAs. Critical users may purchase either newly produced or imported critical use methyl bromide or stocks sold through the expenditure of CSAs. EPA chose this approach, at least in part, to promote market flexibility and efficiency. EPA's formula for calculating the amount of ''available stocks'' contains a variable representing the drawdown of pre-phaseout inventory prior to the beginning of the relevant control period. EPA has attempted to estimate the amounts of pre-phaseout inventory expected to be sold to critical and non-critical users. EPA recognizes that its estimates have become increasingly inexact in characterizing actual drawdown of pre-phaseout inventory, as the amounts in inventory have declined over time. EPA intends to consider the adequacy of using this formula to assess ''available stocks'' in a future action. However, the fact that distributors can choose to sell to non-critical users does not necessarily mean that the inventory is largely unavailable to critical users. In fact, regulatory changes under the FIFRA labeling requirements discussed above will likely mean that remaining stocks are increasingly only available to U.S. critical uses. End of year reported data show that the inventory on December 31, 2011, was 1,248,876 kg. EPA expects that holders of pre-phaseout inventory will be able to expend the full amount of CSA allocations to satisfy the needs of critical users.

One commenter also stated that inventory was disproportionately distributed among fewer distributors and thus is unavailable to critical users. EPA collects information annually on the number of companies that hold

inventory. These data support the comment that some companies no longer maintain any pre-phaseout inventory. Recent mergers have also resulted in fewer companies holding pre-phaseout inventory. However, there has not been a significant change in the overall geographic distribution of inventory. It is still held by companies in large amounts in both California and the Southeast, the two largest markets for critical use methyl bromide. EPA will continue to consider the question of availability of stocks in light of declining inventory and distributors in future actions. However, as noted above EPA believes that holders of pre-phaseout inventory will be able to expend the full amount of CSA allocations in 2012 to satisfy the needs of critical users.

EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA notes that it is modifying the table in 40 CFR 82.8(c)(2) to reflect the recent merger of three methyl bromide distributors who are also critical stock allowance holders. The revised table removes the individual entries for Hendrix & Dail, Hy-Yield Products, and Reddick Fumigants and adds an entry for TriEst Ag Group, Inc. EPA will inform the listed companies of their CSA allocations in a letter following publication of the rule.

*H. The Criteria in Decisions IX/6 and Ex. I/4*

Paragraphs 2 and 5 of Decision XXII/6 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2012 control period. A discussion of the agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.D., V.E., and V.G. of this preamble. EPA has solicited comments on the technical and economic basis for determining that the uses listed in this rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.E., V.F., and V.G. of this preamble. The agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE rule (71 FR 5989) as well as to the memo in the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration.

The remaining considerations are addressed in the nomination documents including: the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has considered the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005, and updated in October 2009. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

EPA received one comment that the Agency should adjust production and import levels in the 2012 CUE Rule to account for research amounts. EPA received a similar comment on the 2011 CUE Rule. The commenter implied that EPA had a previous policy of adjusting the production and import level upward to provide an allocation for research. This is not an accurate characterization of EPA's policy. Prior to 2010, the U.S. Nomination did contain a separate amount for research. While the Parties approved research as a critical use, their decisions encouraged the use of inventory to meet critical research needs. In the corresponding CUE rules, EPA responded to the Parties' decisions by reducing the new production/import amounts by the research amount, leaving the research portion of the total critical use exemption to be met through the use of CSAs.

In the proposed rule, EPA discussed a supplemental critical use nomination of 2,576 kg for research activities in 2012. This nomination was to have been discussed at the Meeting of the Parties in November 2011. EPA proposed to increase the final CSA allocation by up to 2,576 kg after consideration of the action taken by the Parties in November 2011 and comments on research needs. However, prior to the Meeting of the Parties, the U.S. Government withdrew the supplemental nomination. Therefore, EPA is not increasing the final CSA allocation. Nonetheless, the 2012 nomination and the decision the Parties took in 2010 are broad enough to cover both research and non-research uses. As discussed in the preamble to the 2010 CUE rule (75 FR 23179), research is a key element of the critical use process. Research on the crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. While researchers may continue to use newly produced material for field, post-harvest, and emission minimization studies requiring the use of methyl bromide, EPA encourages researchers to use pre-phaseout inventory purchased through the expenditure of CSAs. EPA also encourages distributors to make inventory available to researchers, to promote the continuing effort to assist growers to transition critical use crops to alternatives.

*I. Emissions Minimization*

Previous decisions have stated that Parties shall request critical users to employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. One commenter asks EPA to require emissions minimization techniques rather than simply encourage them. EPA notes that, although EPA considers application rates in determining CUAs, requiring specific emissions minimization techniques would be outside the scope of the proposed rule. EPA developed a comprehensive strategy for risk mitigation through the 2006 Reregistration Eligibility Decision (RED) for methyl bromide, which is implemented through restrictions on how methyl bromide products can be used. This approach does require that methyl bromide labels include directions that treated sites be tarped except for California orchard replant

where EPA instead requires deep (18 inches or greater) shank applications. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film (VIF), by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed.

EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) to promote emission reduction techniques. The federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. USDA–ARS has a national outreach effort to publicize the best practices.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. EPA also encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences and to provide such information with their critical use applications.

## VI. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this final rule is a ''significant regulatory action'' because it was deemed to raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings and this action does not change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201 (see Table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

| Category | NAICS code | SIC code | NAICS Small business size standard (in number of employees or millions of dollars) |
|---|---|---|---|
| Agricultural production .. | 1112—Vegetable and Melon farming ..... | 0171—Berry Crops ..... | $0.75 million. |
| | 1113—Fruit and Nut Tree Farming ..... | 0172—Grapes. | |
| | 1114—Greenhouse, Nursery, and Floriculture Production. | 0173—Tree Nuts. | |
| | | 0175—Deciduous Tree Fruits (except apple orchards and farms). | |
| | | 0179—Fruit and Tree Nuts, NEC. | |
| | | 0181—Ornamental Floriculture and Nursery Products. | |
| | | 0831—Forest Nurseries and Gathering of Forest Products. | |
| Storage Uses ..... | 115114—Postharvest Crop activities (except Cotton Ginning). | ..... | $7 million. |
| | 311211—Flour Milling ..... | 2041—Flour and Other Grain Mill Products 500 employees. | |
| | 31121—Rice Milling ..... | 2044—Rice Milling ..... | 500 employees |
| | 493110—General Warehousing and Storage | 4225—General Warehousing and Storage .... | $25.5 million |
| | 493130—Farm Product Warehousing and Storage. | 4221—Farm Product Warehousing and Storage. | $25.5 million. |
| Distributors and Applicators. | 115112—Soil Preparation, Planting and Cultivating. | 0721—Crop Planting, Cultivation, and Protection. | $7 million. |
| Producers and Importers. | 325320—Pesticide and Other Agricultural Chemical Manufacturing. | 2879—Pesticides and Agricultural Chemicals, NEC. | 500 employees |

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide for 2012. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their

application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2011 down to 1,800 end users of critical use methyl bromide. EPA believes that the number will continue to decline as growers stop applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action confers a benefit to users of methyl bromide. EPA estimates in the Regulatory Impact Assessment found in the docket to this rule that the reduced costs resulting from the de-regulatory creation of the exemption are approximately $22 million to $31 million on an annual basis (using a 3% or 7% discount rate respectively). These reduced costs are dramatic due to the high value of methyl bromide for crop production and agriculture related activities. We have therefore concluded that this rule would relieve regulatory burden for all small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and would not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is expected to affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicited additional comment on this action from tribal officials.

*G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets EO 13045 (62 F.R. 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental

protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions of the United States.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 17, 2012.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: May 11, 2012.

**Lisa P. Jackson,**

*Administrator.*

For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.8 is amended as follows:

■ a. By revising the table in paragraph (c)(1);

■ b. By revising paragraph (c)(2) including the table.

**§ 82.8 Grant of essential use allowances and critical use allowances.**

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(c) * * *

(1) * * *

| Company | 2012 Critical use allowances for pre-plant uses * (kilograms) | 2012 Critical use allowances for post-harvest uses * (kilograms) |
|---|---|---|
| Great Lakes Chemical Corp. A Chemtura Company | 425,197 | 36,499 |
| Albemarle Corp | 174,851 | 15,009 |
| ICL–IP America | 96,626 | 8,294 |
| TriCal, Inc | 3,009 | 258 |
| *Total* ** | *699,683* | *60,061* |

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.
** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2012 on a pro-rata basis in relation to the inventory held by each.

**Company**

Albemarle
Degesch America, Inc.
Prosource One
Bill Clark Pest Control, Inc.
Helena Chemical Co.
Trical Inc.
Burnside Services, Inc.
ICL–IP America
Trident Agricultural Products
Cardinal Professional Products
Industrial Fumigant Company
TriEst Ag Group, Inc.
Chemtura Corp.
Pacific Ag Supplies Inc.
Univar
Crop Production Services
Pest Fog Sales Corp.
Western Fumigation

TOTAL—263,082 kilograms

■ 3. Appendix L to Subpart A is revised to read as follows:

**APPENDIX L TO SUBPART A OF PART 82—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2012 CONTROL PERIOD**

| Approved critical uses<br>Column A | Approved critical user and location of use<br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br>Column C |
|---|---|---|
| **PRE–PLANT USES** | | |
| Cucurbits | (a) Growers in Delaware and Maryland | Moderate to severe soilborne disease infestation. |
| | (b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe root knot nematode infestation. |
| Eggplant | (a) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |

| Approved critical uses<br>Column A | Approved critical user and location of use<br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br>Column C |
|---|---|---|
| | (b) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium collar, crown and root rot.<br>Moderate to severe southern blight infestation.<br>Restrictions on alternatives due to karst topographical features. |
| Forest Nursery Seedlings | (a) Southern Forest Nursery Management Cooperative (Growers in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia). | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation. |
| | (b) Northeastern Forest and Conservation Nursery Association (Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin). | Moderate to severe weed infestation including purple and yellow nutsedge infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation. |
| | (c) Michigan Seedling Growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe Canada thistle infestation.<br>Moderate to severe nutsedge infestation.<br>Moderate to severe nematode infestation. |
| Nursery Stock (Fruit, Nut, Flower). | (a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers. | Moderate to severe nematode infestation.<br>Medium to heavy clay soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) California rose nurseries | Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Orchard Replant | California stone fruit, table and raisin grape, wine grape, walnut, and almond growers. | Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Replanted orchard soils to prevent orchard replant disease.<br>Medium to heavy soils.<br>Local township limits prohibiting 1,3-dichloropropene. |
| Ornamentals | (a) California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene. |
| | (b) Florida growers | Moderate to severe weed infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| Peppers | (a) Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe pythium root, collar, crown and root rots. |
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Georgia growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.<br>Moderate to severe southern blight infestation, crown or root rot.<br>Restrictions on alternatives due to karst topographical features. |
| Strawberry Fruit | (a) California growers | Moderate to severe black root rot or crown rot.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Local township limits prohibiting 1,3-dichloropropene.<br>Time to transition to an alternative. |

| Approved critical uses<br>Column A | Approved critical user and location of use<br>Column B | Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation<br>Column C |
|---|---|---|
| | (b) Florida growers | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe soilborne disease infestation.<br>Carolina geranium or cut-leaf evening primrose infestation.<br>Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation. |
| | (c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation.<br>Moderate to severe black root and crown rot. |
| Strawberry Nurseries | California growers | Moderate to severe soilborne disease infestation.<br>Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe nematode infestation. |
| Sweet Potato Slips | California growers | Local township limits prohibiting 1,3-dichloropropene. |
| Tomatoes | (a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers. | Moderate to severe yellow or purple nutsedge infestation.<br>Moderate to severe soilborne disease infestation.<br>Moderate to severe nematode infestation.<br>Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation. |
| | (b) Maryland growers | Moderate to severe fungal pathogen infestation. |
| **POST–HARVEST USES** | | |
| Food Processing | (a) Rice millers in the U.S. who are members of the USA Rice Millers Association. | Moderate to severe beetle, weevil, or moth infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute. | Moderate to severe beetle, moth, or cockroach infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (c) Members of the North American Millers' Association in the U.S. | Moderate to severe beetle infestation.<br>Presence of sensitive electronic equipment subject to corrosion.<br>Time to transition to an alternative. |
| | (d) Members of the National Pest Management Association treating cheese storage facilities. | Mite infestation. |
| Commodities | California entities storing walnuts, dried plums, figs, raisins, and dates (in Riverside county only) in California. | Rapid fumigation required to meet a critical market window, such as during the holiday season. |
| Dry Cured Pork Products | Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc. | Red legged ham beetle infestation.<br>Cheese/ham skipper infestation.<br>Dermested beetle infestation.<br>Ham mite infestation. |

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 272

**[EPA–R06–2011–0484 FRL–9652–9a]**

## Oklahoma: Incorporation by Reference of Approved State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Oklahoma's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

**DATES:** This regulation is effective July 16, 2012, unless the EPA receives adverse written comment on this regulation by the close of business June 18, 2012. If the EPA receives such comments, it will publish a timely withdrawal of this immediate final rule

in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of July 16, 2012 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *Email: patterson.alima@epa.gov.*
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.
4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

*Instructions:* Direct your comments to Docket ID No. EPA–R06–RCRA–2011–0484. EPA's policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or email. The Federal *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.spa.gov/epahome/dockets.htm*).

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733, phone number (214) 665–8533 or (214) 665–8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Regional Authorization Coordinator or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533 or (214) 665–8178, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, and email address *patterson.alima@epa.gov* or *banks.Julia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

## B. What is the history of the authorization and codification of Oklahoma's hazardous waste management program?

Oklahoma initially received Final authorization effective January 10, 1985, (49 FR 50362) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective on June 18, 1990 (55 FR 14280), November 27, 1990 (55 FR 39274), June 3, 1991 (56 FR 13411), November 19, 1991 (56 FR 47675), November 29, 1993 (58 FR 50854), December 21, 1994 (59 FR 51116), April 27, 1995 (60 FR 2699), March 14, 1997 (62 FR 12100), July 14, 1998 (63 FR 23673), November 23, 1998 (63 FR 50528), February 8, 1999 (63 FR 67800), March 30, 2000 (65 FR 16528), July 10, 2000 (65 FR 29981) March 5, 2001 (66 FR 28), June 9, 2003 (68 FR 17308), April 6, 2009 (74 FR 5994), and May 6, 2011 (76 FR 18927). The EPA incorporated by reference Oklahoma's then authorized hazardous waste program effective December 13, 1993 (58 FR 52679), July 14, 1998 (63 FR 23673), October 25, 1999 (64 FR 46567), October 27, 2003 (68 FR 51488), and August 27, 2010 (75 FR 36546). In this document, the EPA is revising Subpart LL of 40 CFR part 272 to include the authorization revision actions effective April 6, 2009 (74 FR 5994) and June 6, 2011 (76 FR 18927).

## C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Oklahoma's base hazardous waste management program revisions RCRA Clusters XVII through XVIII. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Oklahoma program, and the EPA is not now reopening the decisions, nor requesting comments, on the Oklahoma authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference Oklahoma's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Oklahoma's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Oklahoma hazardous waste management program.

The EPA is incorporating by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. Section 272.1851 incorporates by reference Oklahoma's authorized hazardous waste statutes and regulations. Section 272.1851 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program

Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

**D. What is the effect of Oklahoma's codification on enforcement?**

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Oklahoma procedural and enforcement authorities. Section 272.1851(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

**E. What State provisions are not part of the codification?**

The public needs to be aware that some provisions of Oklahoma's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1851(c)(3) lists the Oklahoma regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Oklahoma has adopted but is not authorized for the Federal rules published in the **Federal Register** on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); June 29, 1995 (60 FR 33912), May 26, 1998 (63 FR 28556), June 14, 2005 (70 FR 34538), August 1, 2005 (70 FR 44150). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:205–3–2(b) through 252:205–3–2(m) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

**F. What will be the effect of Federal HSWA requirements on the codification?**

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

**G. Statutory and Executive Order Reviews**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive order 12866 (56 FR 51735, October 4, 1993). This rule incorporates by reference Oklahoma's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104B–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Oklahoma's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective July 16, 2012.

**List of Subjects in 40 CFR Part 272**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 16, 2012.

**Al Armendariz,**

*Regional Administrator, Region 6.*

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

## PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

**Authority:** Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.1851 to read as follows:

### § 272.1851 Oklahoma State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998 and November 23, 1998, February 8, 1999, March 30, 2000, July 10, 2000, March 5, 2001, June 9, 2003, April 6, 2009, and May 6, 2011.

(b) The State of Oklahoma has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Oklahoma statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Oklahoma regulations that are incorporated by reference in this paragraph from the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911; Web site: *www.sos.state.ok.us/oar/oar_welcome.htm.* The statutes are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.* You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665–8533), or 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.*

(i) The binder entitled ''EPA Approved Oklahoma Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated May 2011.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Oklahoma Environmental Crimes Act, as amended through July 1, 2009, 21 Oklahoma Statutes (O.S.), Sections 1230.1 *et seq.*

(ii) Oklahoma Open Meetings Act, as amended through July 1, 2009, 25 Oklahoma Statutes (O.S.), Sections 301 *et seq.*

(iii) Oklahoma Statutes, Title 27A, ''Environment and Natural Resources'', as amended through July 1, 2009: Chapter 1, ''Oklahoma Environmental Quality Act'', Sections 1–1–101 *et seq.;* Chapter 2, ''Oklahoma Environmental Quality Code'', Sections 2–2–101, 2–2–104, 2–2–201, 2–3–101(F)(1), 2–3–104, 2–3–202, 2–3–501, 2–3–502, 2–3–503, 2–3–504; ''Oklahoma Hazardous Waste Management Act'', Sections 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–109, 2–7–110(A), 2–7–111(C)(2)(b) and (c), 2–7–111(C)(3), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–117, 2–7–123, 2–7–126, 2–7–129, 2–7–130, 2–7–131, 2–7–132, and 2–7–133; ''Oklahoma Uniform Environmental Permitting Act'', Sections 2–14–101 *et seq.*

(iv) Oklahoma Open Records Act, as amended through July 1, 2009, 51 Oklahoma Statutes (O.S.), Sections 24A.1 *et seq.*

(v) Oklahoma Administrative Procedures Act, as amended through

July 1, 2009, 75 Oklahoma Statutes (O.S.), Sections 250 *et seq.*

(vi) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, Hazardous Waste Management, effective July 1, 2009: Subchapter 1, Sections 252:205–1–1(b), 252:205–1–3(a) and (b), 252:205–1–4(a)–(d); Subchapter 3, Sections 252:205–3–2(a) introductory paragraph, 252:205–3–2(a)(1) and 252:205–3–2(a)(3); Subchapter 11, Section 252:205–11–3.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statutes (O.S.) as amended through July 1, 2009, Sections 2–7–119, 2–7–120, 2–7–121, 2–7–121.1 and 2–7–134.

(ii) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective July 1, 2009: Subchapter 1, Sections 252:205–1–1(c)(2) and (3), 252:205–1–2 ''RRSIA''. 252:205–1–2 ''Reuse'', 252:205–1–2 ''Speculative accumulation'', 252:205–1–2 ''Transfer facility'', 252:205–1–2 ''Transfer station'', 252:205–1–4(e); Subchapter 5, Section 252:205–5–1(4), Subchapter 15; Subchapter 17; Subchapter 21; Subchapter 23; and 252:205 Appendices B, C and D.

(4) *Unauthorized State Amendments.* The State's adoption of the Federal rules listed in the following table is not approved by the EPA and are, therefore, not enforceable:

| Federal requirement | **Federal Register** reference | Publication date |
|---|---|---|
| Toxicity Characteristics; Hydrocarbon Recovery Operations | 55 FR 40834 | 10/5/90 |
| | 56 FR 3978 | 2/1/91 |
| | 56 FR 13406 | 4/2/91 |
| Toxicity Characteristics; Chlorofluorocarbon Refrigerants | 56 FR 5910 | 2/13/91 |
| Administrative Stay for K069 Listing | 56 FR 19951 | 5/1/91 |
| Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations. | 56 FR 66365 | 12/23/91 |
| Removal of Legally Obsolete Rules | 60 FR 33912 | 6/29/95 |
| Mineral Processing Secondary Materials Exclusion.—Amendments to 40 CFR | 63 FR 28556 | 5/26/98 |
| Methods Innovation: SW–846 | 70 FR 34538 | 6/14/05 |
| | 70 FR 44150 | 8/1/05 |

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Oklahoma, signed by the EPA Regional Administrator on March 11, 2011, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Oklahoma January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; April 15, 1997; February 6, 1998, December 2, 1998, October 15, 1999, May 31, 2000, October 15, 2001, June 27, 2003, March 1, 2005, July 12, 2005, July 03, 2006, August 25, 2008, and March 26, 2010 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272 is amended by revising the listing for ''Oklahoma'' to read as follows:

## Appendix A to part 272—State Requirements

* * * * *

**Oklahoma**

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition (unless otherwise specified), Sections 2–7–103 (2008 supplement), 2–7–108(A) (2010 Annual Cumulative Pocket Part), 2–7–108(B)(1) (2010 Annual Cumulative Pocket Part), 2–7–108(B)(3) (2010 Annual Cumulative Pocket Part), 2–7–108(C) (2010 Annual Cumulative Pocket Part), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B), 2–7–111(C)(1), 2–7–111(C)(2)(a), 2–7–111(D), 2–7–111(E), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118, 2–7–124, 2–7–125 (2010 Annual Cumulative Pocket Part), 2–7–127 and 2–10–301(G) (2010 Annual Cumulative Pocket Part), as published by West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164 0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.*

The regulatory provisions include:

The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective July 1, 2009: Subchapter 1, Sections 252:205–1–1(a), 252:205–1–1(c) introductory paragraph, 252:205–1–1(c)(1), 252:205–1–2 introductory paragraph, 252:205–1–2 ''OHWMA'', 252:205–1–2 ''Post-closure permit'', 252:205–1–3(c); Subchapter 3, Sections 252:205–3–1, 252:205–3–2(a)(2), 252:205–3–2(b)–(n), 252:205–3–4, 252:205–3–5 and 252:205–3–6; Subchapter 5, Sections 252:205–5–1 (except 252:205–5–1(4)), 252:205–5–2 through 252:205–5–5; Subchapter 7, Sections 252:205–7–2 and 252:205–7–4 (except the phrase ''or in accordance with 252:205–15–1(d)); Subchapter 9, Sections 252:205–9–1 through 252:205–9–4; Subchapter 11, Sections 252:205–11–1(a) (except the word ''recycling''), 252:205–11–1(b)–(e) and 252:205–11–2; and Subchapter 13, Sections 252:205–13–1(a)–(e), as published by the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911;Web site: *www.sos.state.ok.us/oar/oar_welcome.htm.*

* * * * *

[FR Doc. 2012–11875 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 153

**[CMS–9975–CN]**

**RIN 0938–AR07**

## Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment; Correction

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a technical error that appeared in the final rule with comment period published in the **Federal Register** on March 23, 2012

entitled, ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment.''

**DATES:** *Effective Date:* This correction is effective on May 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jeff Wu at (301) 492–4416. Wakina Scott at (301) 492–4393.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In **Federal Register** Doc. 2012–6594 of March 23, 2012 (77 FR 17220–17252), there was a technical error that is identified and corrected in the ''Correction of Error'' section below. The provision in this correction document is effective as if it had been included in the document published on March 23, 2012. Accordingly, the correction is effective on May 22, 2012.

## II. Summary of Error

On page 17248, we inadvertently made an incorrect cross reference in the regulations text at § 153.220(d). We are correcting the cross reference from ''§ 153.210(a)(2)(ii)'' to read ''§ 153.210(a)(2)(iii)'' to specify that if a State contracts with more than one applicable reinsurance entity, the State must notify HHS in the manner and timeframe specified by HHS of the percentage of reinsurance contributions received from HHS for the State to be allocated to each applicable reinsurance entity.

## III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds there is good cause to do so, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects technical and typographic errors in the Health Insurance Premium Stabilization final rule that was published on March 23, 2012 and becomes effective on May 22, 2012. The changes are not substantive changes to the standards set forth in the final rule. Therefore, we believe that undertaking further notice and comment procedures to incorporate this correction and delay the effective date for this change is unnecessary. In addition, we believe it is important for the public to have the correct information as soon as possible, and believe it is contrary to the public interest to delay the dissemination of it. For the reasons stated above, we find there is good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

## IV. Correction of Error

*Correction to the Regulations Text*

**§ 153.220 [Corrected]**

■ On page 17248, in the second column; under ''paragraph (d) *Distribution of reinsurance contributions,''* in line 11, revise the cross reference ''§ 153.210(a)(2)(ii)'' to read ''§ 153.210(a)(2)(iii)''.

Dated: May 11, 2011.

**Jennifer Cannistra,**

*Executive Secretary to the Department.*

[FR Doc. 2012–11994 Filed 5–16–12; 8:45 am]

**BILLING CODE 4120–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 15

**[ET Docket No. 04–186 and 02–380; FCC 12–36]**

## Unlicensed Operation in the TV Broadcast Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document addresses five petitions for reconsideration of the Commission's decisions in the *Second Memorandum Opinion and Order* (''*Second MO&O*'') in this proceeding and modifies the Commissions rules in certain respects. In particular, the Commission is increasing the maximum height above average terrain (HAAT) for sites where fixed devices may operate; modifying the adjacent channel emission limits to specify fixed rather than relative levels; and slightly increasing the maximum permissible power spectral density (PSD) for each category of TV bands device. These changes will result in decreased operating costs for fixed TVBDs and allow them to provide greater coverage, thus increasing the availability of wireless broadband services in rural and underserved areas without increasing the risk of interference to incumbent services. The Commission is also revising and amending several of its rules to better effectuate the Commission's earlier decisions in this docket and to remove ambiguities.

**DATES:** Effective June 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Hugh L. Van Tuyl, Office of Engineering and Technology, 202–418–7506, *hugh.vantuyl@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Memorandum Opinion and Order, ET Docket No. 04–186 and 02–380, FCC 12–36, adopted April 4, 2012 and released April 5, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* 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).

## Summary of the Third Memorandum Opinion and Order

1. In this Order, the Commission addressed five petitions for reconsideration of its decisions in the *Second Memorandum Opinion and Order* (''Second MO&O''), 75 FR 75814, December 6, 2010, in this proceeding and modified its rules in certain respects. In particular, the Commission increased the maximum height above average terrain (HAAT) for sites where fixed devices may operate; modified the adjacent channel emission limits to specify fixed rather than relative levels; and slightly increased the maximum permissible power spectral density (PSD) for each category of TV bands device. These changes will result in decreased operating costs for fixed TVBDs and allow them to provide greater coverage, thus increasing the availability of wireless broadband services in rural and underserved areas without increasing the risk of interference to incumbent services. The

Commission also revised and amended several of its rules to better effectuate the Commission's earlier decisions in this docket and to remove ambiguities.

**Background**

2. In the *First Report and Order and Further Notice of Proposed Rule Making* in this proceeding, 71 FR 66876, and 71 FR 66897, November 17, 2006, respectively, the Commission allowed fixed unlicensed devices to operate on vacant TV channels, excluding channel 37, and prohibited personal/portable devices from operating on channels 14–20 that are used by public safety operations in some cities. However, it did not adopt final technical rules at that time. In the *Second Report and Order* in this proceeding, the Commission adopted rules that allow unlicensed devices to operate in the TV bands at locations where frequencies are not in use by licensed services. The TV bands consist of six-megahertz channels designated 2 to 51 in four bands of frequencies in the VHF and UHF regions of the radio spectrum (54–72 MHz, 76–88 MHz, 174–216 MHz, and 470–698 MHz).

3. The Commission permitted two categories of unlicensed devices, fixed and personal/portable unlicensed, to operate in the TV bands. Fixed devices must incorporate a geo-location capability and a means to access a database that provides a list of available TV channels that may be used at their location. Such devices must contact a database to obtain a channel list before operating and re-check the database at least once daily. Fixed devices are permitted to operate with up to one watt transmitter power output and may use an antenna that provides up to 6 dBi of gain. Portable devices can operate either as ''Mode I'' or ''Mode II''. A Mode II device must incorporate similar geo-location and database access capabilities to fixed devices. A Mode I device is not required to incorporate geo-location or database access capabilities but instead obtains the list of available channels on which it can operate from either a fixed or Mode II device that has database access. Personal/portable devices are permitted to operate with up to 100 mW EIRP except when operating on channels adjacent to a TV service, in which case they may operate with up to 40 mW EIRP. The databases used by TV bands devices are established and administered by parties selected by the Commission.

4. In the *Second MO&O* in this proceeding, the Commission upheld the majority of its prior decisions but made the following changes to the rules that are at issue in one or more of the five petitions for reconsideration that it addressed in this order:

- Restricted fixed TV bands devices from operating at locations where the ground level is more than 76 meters above the average terrain level in the area.
- Eliminated the requirement that TV bands devices that incorporate geo-location and database access must also listen (sense) to detect the signals of TV stations and low power auxiliary service stations (wireless microphones). As part of that change, the Commission also revised the rules in several respects to reflect use of that method as the only means for determining channel availability. These changes include requiring Mode I devices to verify channel availability and Mode II devices to verify their operating location at regular time intervals.
- Modified the rules governing the measurement of adjacent channel emissions.
- Required that information in the TV bands databases be publicly available.

5. The petitions for reconsideration raise the following issues: (1) The height above average terrain (HAAT) limit for TV bands devices; (2) out-of-band emission limits; (3) protection of wireless services on TV channel 52; (4) establishment of a new category of fixed indoor TV bands devices; and (5) the confidentiality of certain information in the TV bands database.

**Discussion**

6. The Commission found that in the *Second MO&O,* it generally established the appropriate balance between providing for operation of TV bands devices that will make new broadband services available to the public while protecting incumbent services in the TV bands from interference. Thus, it upheld the majority of its decisions in the *Second MO&O* that are addressed in the petitions for reconsideration. The Commission found merit in some of those requests and therefore modified certain rules to enhance TVBD operations, particularly in rural and underserved areas. In particular, it increased the maximum height above average terrain (HAAT) of sites where fixed devices may operate, modified the adjacent channel (out-of-band) emission limits to specify fixed levels, and slightly increased the maximum permissible power spectral density (PSD) for each category of TV bands device. These changes will result in decreased operating costs and greater coverage from fixed TV bands devices that the Commission expects will increase the availability of wireless broadband services in rural and underserved areas. It found that these changes will not increase the risk of interference to incumbent services. The Commission corrected several of its rules to better effectuate the Commission's earlier decisions in this docket and to remove ambiguities.

7. *Decision.* The Commission modified its rules to establish a maximum HAAT for a fixed device antenna of 250 meters and maintained the limit for fixed device antenna height AGL at 30 meters. The Commission took this action because it found that the current rule, which limits fixed TV bands devices to sites where the ground HAAT is no greater than 76 meters, unnecessarily precludes the operation of fixed TV bands devices at many locations in the country, particularly in rural and other areas that are currently underserved by broadband services. Under the modifications that the Commission adopted, a site with an elevation of up to 220 meters above average terrain could be used with a 30-meter antenna, or a site with a higher elevation above average terrain could be used with a shorter antenna, provided the sum of the site elevation above average terrain and antenna height above ground does not exceed 250 meters. These changes will result in lower costs and greater flexibility for fixed device operators by allowing the use of sites that were previously precluded by the rules and permitting greater coverage from each site. This will increase the availability of wireless broadband services, particularly in rural and underserved areas.

8. The Commission declined to raise the limit for fixed device antenna height AGL to 75 meters. It previously considered and rejected requests to raise this limit in the *Second MO&O,* noting that the 30-meter height above ground limit was established as a balance between increasing the TV bands device transmission range and the need to minimize the impact on licensed services. While the Commission recognized the argument that an increased antenna height above ground limit could improve TV bands device range in certain circumstances, it found that the Commission appropriately took a conservative approach to minimize the potential for interference to authorized services by limiting the antenna height AGL to 30 meters. It therefore declined to increase this limit at this time. As the Commission previously stated, it could revisit this height limit in the future if experience with TV bands devices indicates they could operate at higher antenna heights without causing interference. Also, the changes the Commission made by removing the 76-

meter site HAAT limit and permitting an antenna HAAT of up to 250 meters will serve to increase the coverage of TV bands devices in many instances.

**Height Above Average Terrain (HAAT) Limit**

9. Because the range at which interference occurs increases as the antenna height is raised, the Commission made additional changes to offset the increased potential for harmful interference at the higher antenna heights it is permitting. As recommended by the Joint Petitioners, the Commission revised the table of minimum required separation distances between fixed devices and the contours of co-channel and adjacent channel TV stations to specify separation distances for HAAT ranging from less than three meters to a maximum of 250 meters. The Commission found that the Joint Petitioners' recommended separation distances are greater than necessary to provide the level of protection to TV services that the Commission decided to provide. It therefore modified the table as shown.

| Antenna height above average terrain of unlicensed device | Required separation (km) from digital or analog TV (full service or low power) protected contour | |
|---|---|---|
| | Co-channel (km) | Adjacent channel (km) |
| Less than 3 meters | 4.0 | 0.4 |
| 3–Less than 10 meters | 7.3 | 0.7 |
| 10–Less than 30 meters | 11.1 | 1.2 |
| 30–Less than 50 meters | 14.3 | 1.8 |
| 50–Less than 75 meters | 18.0 | 2.0 |
| 75–Less than 100 meters | 21.1 | 2.1 |
| 100–Less than 150 meters | 25.3 | 2.2 |
| 150–Less than 200 meters | 28.5 | 2.3 |
| 200–250 meters | 31.2 | 2.4 |

10. The methodology used by the Joint Petitioners to calculate the required separation distances between TV bands devices and co-channel and adjacent channel TV contours is generally consistent with the methodology described in the *Second Report and Order.* The Joint Petitioners calculated separation distances from fixed devices with an antenna HAAT of 30 meters and greater in the same manner as the Commission by using the F(50,10) propagation curves in the rules. The Joint Petitioners used the OET TM–91–1 method to calculate separation distances for fixed device antenna heights below 30 meters HAAT because the Commission's propagation curves are undefined for HAAT values below 30 meters. OET TM–91–1 is a model that the Commission uses for calculating signal levels at short distances and low antenna heights above ground. While the Commission used a different propagation model to calculate the separation distances at low antenna heights in the *Second Report and Order* (the Okumara model), it used the TM–91–1 model in the *Second Report and Order* to calculate the impact of personal/portable TV bands devices on TV reception at short distances, *e.g.,* up to approximately 1.5 km. Based on its comparison of these models, the Commission found that TM–91–1 is appropriate for calculating signal levels at distances less than 1 km (as well as longer distances), whereas the Okumura model was not designed for use at distances less than 1 km. Thus, the Commission agreed with the Joint Petitioners' suggestion to use the TM–91–1 model to calculate the required separation distances from TV bands devices at antenna heights below 30 meters HAAT where the Commission's propagation curves are undefined.

11. The Commission prohibited fixed devices with an HAAT greater than the current maximum of 106 meters from providing channel lists to Mode I personal/portable devices. This action was necessary because a Mode I device, which does not incorporate a geo-location capability, obtains a list of available channels from a fixed or Mode II device that is determined by the geographic coordinates of those devices. Under the 106 meter limitation, the communication distance between a Mode I device and the fixed or Mode II device that provides a channel list is relatively short, and thus there is a low probability that a Mode I device would operate at a location where its channel list is not valid, *i.e.,* does not meet the minimum separation distances from co-channel and adjacent channels TV stations or other protected services. However, if the fixed device that obtains the channel list for a Mode I device operates with greater HAAT than the current rules permit, the Mode I device could operate at a greater distance from the coordinates of the fixed device where the available channel list was calculated. This will increase the chance that the Mode I device could operate at a location where the channel list is not valid. The Commission therefore required that the TV bands database not provide channel lists for Mode I devices through fixed devices with an antenna HAAT of greater than 106 meters.

12. The Commission did not increase the minimum required separation of one kilometer between wireless microphones and fixed devices operating at a higher HAAT than the current rules allow, because the higher HAAT will not increase fixed device signal strength at a one kilometer distance. The OET TM–91–1 model that is used to calculate signal strength at the distance takes into account radiated power, separation distance, and the antenna height AGL, but is independent of the HAAT. Because the Commission did not increase the maximum fixed device antenna height AGL or radiated power, there will be no increase in signal level at one kilometer. The Commission also did not increase the size of the exclusion zones around receive sites for MVPDs, low power TV or BAS links, because it has no information demonstrating that the existing requirements are insufficient to provide adequate protection at the higher antenna HAAT that it is permitting for fixed devices.

*Out-of-Band Emissions*

13. In the *Second Report and Order,* the Commission adopted out-of-band emission limits for TV bands devices to protect other authorized services both

inside and outside the TV bands. For emissions that fall in a TV channel adjacent to the operating channel of a TV bands device, the Commission required that these emissions be at least 55 dB below the highest emission in the operating channel, with both the in-band and out-of-band emissions measured with a 100 kHz bandwidth. Emissions that are more than one channel removed from the operating channel must comply with the limits specified in § 15.209 of the rules. These field strength limits, measured at a distance of 3 meters, are 100 microvolts per meter (30–88 MHz), 150 microvolts per meter (88–216 MHz), 200 microvolts per meter (216–960 MHz), and 500 microvolts per meter (above 960 MHz).

14. In the *Second MO&O,* the Commission modified the limits for emissions that fall in TV channels adjacent to the operating channel. Specifically, it required that in-band emissions be measured within a 6 MHz bandwidth instead of within a 100 kHz bandwidth, and it revised the required level of attenuation from 55 dB to 72.8 dB to compensate for the difference in measurement bandwidths while providing the same level of interference protection. The Commission made these changes to ensure consistency in emission measurements, because the in-band power measured within a 100 kHz bandwidth could vary depending on the bandwidth of the transmitted signal, whereas the total power measured within a 6 MHz bandwidth will be the same regardless of whether the signal fills the entire channel or just part.

15. *Decision.* The Commission modified the rules for adjacent channel emission limits to specify fixed values, rather than vary the limit relative to the in-band power. Specifically, it adopted a fixed adjacent channel emission limit for each category of TV bands device that is equivalent to the current emission limit for devices operating at maximum power. Devices operating at less than the maximum permitted power will not be required to suppress emissions below the fixed limits. This eliminates the need for a device operating at less than the maximum permitted power to unnecessarily suppress adjacent channel emissions below the levels needed to prevent interference to other services in the TV bands, thus simplifying equipment design and reducing its cost. A fixed emission limit also simplifies compliance measurements, because the emission level can be measured directly rather than by comparing the in-band and adjacent channel power measured in two different bandwidths.

16. The Commission calculated the appropriate fixed adjacent channel emission limits as follows. The current adjacent channel emission limit is −72.8 dB in a 100 kHz bandwidth, measured relative to the total in-band power in a 6 MHz bandwidth. It defined a fixed adjacent channel emission limit for each of the four maximum power levels at which TV bands devices can operate (fixed: 1 Watt; personal/portable: 100 mW; personal/portable operating adjacent to occupied channels: 40 mW; and sensing-only devices: 50 mW). The adjacent channel emission limit for each category of device is simply the maximum power permitted in a 6 MHz bandwidth minus 72.8 dB. A table showing these limits is provided.

17. The Commission also slightly increased the maximum permissible PSD for each category of TV bands device to address the roll-off concern raised by Spectrum Bridge. It established the PSD limits to prevent multiple TV bands devices with transmit bandwidths of much less than 6 MHz from sharing a channel, which could result in a total transmitted power within a channel significantly greater than the limits for individual fixed or personal/portable devices. These limits were derived using the assumption that the maximum permitted power of a TV bands device is spread uniformly across a 6 MHz channel. However, the Commission recognized that this assumption makes compliance with either the current or the modified adjacent channel emission limits it adopted impractical if a device operates at the maximum permissible power level. For a TV bands device to operate at the maximum permissible power, it must fill the entire 6 MHz channel, leaving no margin for a roll-off from the in-band signal to the much lower level it must meet in the adjacent channel. The Commission therefore increased the PSD limit for each category of TV bands device by 0.4 dB, which will allow a TV bands device to operate at the maximum permissible power in a bandwidth of 5.5 MHz instead of 6 MHz. This will allow 250 kHz for a roll-off from the in-band signal to each adjacent channel. The Commission did not adopt a 6 dB (4 times) increase in the PSD limit as Spectrum Bridge suggests, because that change would allow devices to operate at maximum power in a bandwidth of much less than 6 MHz, thus making it possible for multiple devices to share a channel with a total power greater than the limits currently allowed for an individual device.

18. The revised PSD and adjacent channel emission limits that the Commission adopted are as follows.

| Type of TV bands device | Power limit (6 MHz) | PSD limit (100 kHz) | Adjacent channel limit (100 kHz) |
|---|---|---|---|
| Fixed | 30 dBm (1 Watt) | 12.6 dBm | −42.8 dBm. |
| Personal/portable (adj. channel) | 16 dBm (40 mW) | −1.4 dBm | −56.8 dBm. |
| Sensing only | 17 dBm (50 mW) | −0.4 dBm | −55.8 dBm. |
| All other personal/portable | 20 dBm (100 mW) | 2.6 dBm | −52.8 dBm. |

19. In the Commission's review of the PSD and adjacent channel emission issues, it discovered some minor inconsistencies and omissions in the rules concerning the measurement of emissions and corrected them herein. Specifically, § 15.709(c) does not specify whether compliance with the adjacent channel emission limits is determined through radiated or conducted measurements. In addition, § 15.709(a)(5) requires measurement of the power conducted from the TV bands device into the antenna to determine compliance with the PSD limits. However, this is not possible for personal/portable devices which are required to have a permanently attached antenna. This section also does not include a requirement that fixed device PSD must be reduced in the same manner as the maximum conducted output power when the transmit antenna gain exceeds 6 dBi. Such a requirement is necessary to ensure that the PSD is proportionally reduced when the maximum output power is reduced to prevent a device from transmitting in a bandwidth of much less than 5.5 MHz at the maximum permissible power level. To correct these omissions and inconsistencies, the Commission revised § 15.709(a) and (c) to specify that the PSD and adjacent channel emission limits are conducted power limits for fixed devices and EIRP (radiated) limits for personal/portable devices. It also required that the conducted PSD limit for fixed devices be reduced by one dB

for each dB that the maximum directional gain of the transmit antenna exceeds 6 dBi. These rule clarifications will not result in any increased compliance costs for equipment manufacturers.

20. The Commission declined to relax the out-of-band emission limit to the specific values requested by Motorola, the Joint Petitioners, and the Wi-Fi Alliance. As the Commission previously noted in the *Second MO&O,* adjacent channel emissions from a TV bands device appear as co-channel emissions in an adjacent channel used by a TV station or other authorized service, and interference can occur to TV reception at very low undesired co-channel signal levels. The Commission also noted that personal/portable TV bands devices are permitted to operate within the protected contours of adjacent channel TV stations, and fixed TV bands devices can operate as close as 0.1 kilometers outside the contours of adjacent channel stations and at significantly higher power than personal/portable TV bands devices. Thus, the Commission found it appropriate to require TV bands devices to meet tighter adjacent channel emission limits than other equipment such as Wi-Fi devices that do not typically operate adjacent to services that receive interference at the same low level as the broadcast TV service. The Commission noted that the relaxation of the limit requested by the petitioners is approximately 25 dB (316 times the power), which would be a very significant increase in adjacent channel power over the maximum the rules currently permit and would have the potential to cause interference to adjacent channel users in the TV bands.

21. The Commission found that increasing the minimum separation distances between TV bands devices and adjacent channel TV stations as a way to offset the increased interference potential would be effective only in protecting TV reception but not other services that operate in or adjacent to the TV bands. For example, registered wireless microphones and other low power auxiliary services authorized under part 74 would be impacted by the increased noise that TV bands devices would place in adjacent channels. This increased noise also could limit the use of personal/portable TV bands devices operating adjacent to fixed TV bands devices, thereby impairing efficient use of spectrum. Increasing the 1 kilometer protection distance around registered wireless microphones would be ineffective because registration provides only co-channel and not adjacent channel protection from TV bands devices. Further, the increased adjacent channel emission levels could impact wireless services adjacent to the TV bands, such as those above channel 51 (the subject of another petition discussed in detail below), land mobile radio services on frequencies below channels 7 and 14, and the Low Power Radio Service above channel 13.

22. For the reasons stated, the Commission declined to relax the adjacent channel emission limits to prevent interference to authorized services in and adjacent to the TV bands. It concluded that its decision on this issue promotes more efficient use of the TV spectrum by both licensed and unlicensed devices. The Commission recognized the petitioners' argument that tighter emission limits could result in higher equipment costs. It found, however, that the record in this proceeding indicates that at least one equipment manufacturer, Adaptrum, is capable of building a prototype device that complies with the limits adopted in the Second MO&O. In addition, another manufacturer, Koos Technical Services, Inc., developed a device that complies with all the requirements for fixed TV bands, devices, including the adjacent channel emission limits, and became the first party to obtain certification for a TV bands device. Further, tighter out-of-band emission limits can allow users to operate in adjacent frequency bands with less geographic separation between them, thus enabling more efficient and intensive use of spectrum. Thus, the Commission concluded that the benefits of tighter out-of-band emission limits outweigh any increase in equipment cost that may be necessary to comply with these rules.

*Protection of Wireless Services on Channel 52*

23. Prior to the June 12, 2009 digital television transition, full-service TV stations were permitted to operate on channels 52–69 (698 MHz to 806 MHz, also referred to as the 700 MHz band). The Commission reallocated these channels for services other than broadcast television. Under the band plan that the Commission adopted, there are two channel groupings: (1) The lower 700 MHz band, consisting of channels 52–59, and (2) the upper 700 MHz band, consisting of channels 60–69. The lower 700 MHz band is divided into five blocks designated A through E, and the upper 700 MHz band is divided into four blocks designated A through D, with two additional bands allocated for public safety use. Block A in the lower 700 MHz band, which is the subject of Cellular South's petition for reconsideration in this proceeding, consists of TV channel 52 paired with TV channel 57. This pairing of channels with a 30 MHz frequency separation between them is designed to allow the use of these channels for two-way wireless operations. Fixed base stations will transmit to mobile devices using channel 57, while mobile devices will transmit to base stations using channel 52. Therefore, base stations will incorporate receivers that receive signals from mobile devices on channel 52. The lower 700 MHz Block A was licensed through Commission Auction 73 in 2008. Cellular South is one of the entities that obtained licenses for Block A through this auction. It did not previously participate in this proceeding.

24. Prospective bidders were made aware prior to Auction 73 that there would continue to be full-service and low power television stations on channel 51 after the auction. The Public Notice describing this auction's procedures cautioned potential bidders about Commission rules and requirements that place limits on the ability of 700 MHz band licensees to use this spectrum. The Public Notice specifically pointed to § 27.60 of the rules that requires wireless licensees to protect co-channel and adjacent channel TV stations, including stations on channel 51. Thus, prospective bidders for Block A were given notice that there would be TV stations on adjacent channel 51, and the emission levels that a TV station may place in an adjacent channel are clearly specified in the Commission's rules. These limits permit TV stations to place significantly higher power in an adjacent channel than part 15 TV bands devices.

25. CTIA—the Wireless Association and the Rural Cellular Association filed a petition for rulemaking and a licensing freeze on March 15, 2011, requesting that the Commission take action to prevent further interference to Block A licensees. To permit the Commission to evaluate the matters raised in the petition, the Media Bureau placed a freeze on the filing of new applications and most applications for minor changes to low power and full power television stations on channel 51. The Commission took that action to preserve the status quo and to ensure that new applications are not filed in anticipation of the future limitations proposed in the petition. It has not yet taken any other action with respect to this petition.

26. *Decision.* The Commission declined to establish in this docket new requirements to protect wireless operations on channel 52. As an initial matter, it noted that Cellular South's petition on this issue was not timely filed. The Commission adopted rules

permitting TV band devices to operate on Channel 51 in its 2008 *Second Report and Order*. Pursuant to § 1.429(d) of the Commission's rules, the deadline for seeking reconsideration of that decision was 30 days after the summary of the *Second Report and Order* was published in the **Federal Register**. Cellular South filed its petition in January 2011, more than two years after the applicable due date.

27. As an independent and alternative basis, the Commission dismissed Cellular South's petition on this issue pursuant to § 1.429(b) of the Commission's rules, which precludes parties from relying on facts in petitions for reconsideration that were not presented to the Commission previously, unless those facts have changed or the party could not have known about those facts when it had an opportunity to comment. No party raised the issue of protection criteria for services on channel 52 in response to the *NPRM* or *FNPRM* in this proceeding or at any time prior to Cellular South's petition for reconsideration. The Commission was not persuaded that Cellular South could not previously participate in this proceeding. Cellular South purchased its licenses at auction in 2008, several months before the adoption of the *Second Report and Order,* and over two years before the adoption of the *Second MO&O.* Cellular South therefore had ample opportunity to make any concerns about potential interference from TV bands devices to wireless services in the lower 700 MHz Block A known to the Commission but failed to do so. While the Commission recognized Cellular South's argument that the final technical specifications for 700 MHz band equipment were not available until more recently, it did not find that a convincing explanation for not participating in the proceeding. If the precise technical parameters needed to perform an interference analysis are not known (*e.g.,* receiver bandwidth, noise floor, noise figure, antenna gain, and desired-to-undesired signal ratio), parties could make reasonable estimates of these parameters. Cellular South, however, did not provide any analysis or even express to the Commission any general concerns about possible interference prior to filing its petition for reconsideration.

28. As another independent and alternative basis for dismissing the petition on this issue, the Commission reached the merits and rule against Cellular South. The Commission found that there is no need to adopt new requirements as Cellular South requests because the current rules appropriately protect wireless operations on channel 52. The emission levels that a TV bands device may place in an adjacent channel are far below the levels that a full-service TV station on channel 51 may place in adjacent channel 52. Specifically, emissions from TV bands devices in the adjacent channel must be at least 72.8 dB below the level in the 6 MHz channel where the TV bands device operates. As discussed, the Commission modified the rules to specify maximum adjacent channel emission levels that provide this level of adjacent channel protection. For a personal/portable TV bands device operating on channel 51 at the maximum allowable power of 100 milliwatts EIRP, the maximum radiated emission in the adjacent channel would be −52.8 dBm EIRP or 132 microvolts per meter at a distance of three meters. This is below the § 15.209 out-of-band emission limit of 200 microvolts per meter at three meters that applies to most part 15 transmitters in this frequency band. In the case of fixed TV bands devices operating on channel 51 at the maximum EIRP of 4 watts, the maximum permitted emission in the adjacent channel is −36.8 dBm EIRP or 835 microvolts per meter at three meters. While this is greater than the § 15.209 limit, the Commission noted that this limit was developed with the assumption that there would be a 10 meter separation between a potentially interfering device and the device being protected. The Commission expects that there would typically be a much greater separation distance between a TV bands device and a wireless base station receiving channel 52, thus significantly reducing the signal level at the receiver and the likelihood of interference. Thus, the Commission found that there is a very low probability that TV bands devices on channel 51 will cause harmful interference to wireless services in the adjacent band. Because the Commission did not adopt here protection criteria between TV bands devices and Block A stations, it saw no reason to include 700 MHz Block A base stations in the TV bands databases.

29. While the part 15 rules are designed to minimize the likelihood of interference to authorized services, there is always the possibility that interference may occur in certain situations. Therefore TV bands devices, like all other part 15 devices, operate on a non-interference basis, meaning that in the event a device causes interference to an authorized service, the device must cease operation. Because fixed TV bands devices must be registered in the TV bands database, if a licensee of a wireless system were to receive interference, it could check the database to find information on the interfering device. Also, as the Commission stated in the *Second Report and Order,* it intends to closely oversee the development and introduction of TV bands devices and take whatever actions may be necessary to correct any interference that may occur and will consider any rule changes that might be needed to better protect against harmful interference to incumbent services. Because TV bands devices operate under the control of a database that provides a list of available channels to the TV bands devices, in the event of harmful interference the Commission could take steps such as requesting the database operators to limit the use of certain TV channels in an area. Thus, the Commission found no need to adopt new protection requirements for wireless services on channel 52 at this time.

*New Class of TV Bands Devices*

30. As discussed, the rules that the Commission adopted in the *Second Report and Order* allow for two classes of TV bands devices—fixed and personal/portable. Fixed devices may operate at power levels up to 4 watts EIRP and must either incorporate a geo-location capability such as GPS or be professionally installed and have the devices' geographic coordinates manually entered by the installer. Personal/portable devices may operate with a power level up to 100 mW EIRP. Mode II personal/portable devices must incorporate a geo-location capability such as GPS to determine the geographic coordinates to within +/− 50 meters. Both fixed and Mode II portable devices must access a database that provides a list of available channels at the devices' location. A Mode II portable device must re-check its location and the database for available channels if it changes location during operation. Mode I devices are not required to incorporate geo-location or database access capabilities, and they obtain a list of available channels on which they can operate from either a fixed or Mode II device that accesses a database. A portable device can operate in Mode II at locations where it can receive a geo-location signal, and in Mode I at locations where it cannot. Fixed devices may operate only on vacant TV channels that are not adjacent to occupied TV channels, while personal/portable devices may operate adjacent to occupied TV channels if their maximum EIRP is reduced to no more than 40 milliwatts.

31. In the *Second MO&O,* the Commission decided that a Mode II

device must use its geo-location capability to check its location at least once every 60 seconds while in operation to determine whether it has moved. In addition, the Commission required that a Mode II device check the database when it moves more than 100 meters from the location where it performed its last database check.

32. *Decision.* The Commission declined to establish a new class of fixed indoor devices as requested by the Wi-Fi Alliance. The Wi-Fi Alliance states that the devices of interest would be mass market Mode II personal/portable devices, thus indicating to us that they would be small and easily transportable. The Commission found that such devices would have a high potential for causing interference to authorized services in the TV bands if they did not incorporate a geo-location capability to accurately determine their location. The devices could easily be moved to a different location without updating the coordinates, where they would then receive an inaccurate list of available channels. In the absence of a geo-location capability, the coordinates would have to be manually entered into a device. In the case of mass market consumer devices, the Commission would not consider the consumer to be a professional installer. It expected that many consumers would lack knowledge or experience in determining and entering a device's coordinates and therefore would be likely to make more errors than a professional installer or, alternately, would be more likely to enter an improper set of coordinates. While the Commission denied the Wi-Fi Alliance's request to create a new category of TV bands device, it noted the current rules do in fact contain provisions that allow TV bands devices to operate without GPS under certain circumstances. Specifically, a personal/portable device can operate without GPS in Mode I if it communicates with either a fixed device or a Mode II personal/portable device that provides it with a list of available channels on which it can operate.

**Confidentiality of Database Information**

33. In the *Second MO&O,* the Commission decided that all information that is required by the Commission's rules to be in a TV bands database is to be publicly available, including fixed TV bands device registration and voluntarily submitted protected entity information, such as cable headends. The Commission noted that the registration of a protected entity in the database will preclude operation of TV bands devices on one or more channels over specific areas and that there is the possibility of errors in the registration information. It further noted that while much of the data will come from Commission databases that already are public sources, errors could result from the inadvertent entry of incorrect data or as a result of a party deliberately entering false data. The Commission therefore found that it is appropriate to permit public examination of protected entity registration information to allow the detection and correction of errors.

34. *Decision.* The Commission declined to require that the geographic coordinates or other information concerning cable headends in the TV bands database be kept confidential. First, it noted that NCTA previously participated in this proceeding but never alleged prior to filing its petition that there is any need to keep information on cable headends confidential. The issue of public availability of database information was raised in the petitions for reconsideration of the *Second Report and Order* in this proceeding, and NCTA raised no concerns about the confidentiality of headend registrations in its response to these petitions. In any case, the Commission was not persuaded that making information about cable headends publicly available poses a security threat to communications infrastructure. Based on the documents referenced in NCTA's petition, virtually all communications facilities, including wireline, wireless, satellite, cable, and broadcasting facilities, could be classified as critical infrastructure. Information on a large number of these communications facilities is already publicly available through the Commission's databases, and there is no evidence that the public availability of this information has ever posed a threat to the security of communications infrastructure. Also, as NCTA and PISC note, information on the locations of cable headends is already publicly available from other sources, and the TV bands databases will only list those facilities that are outside the protected contours of the over-the-air TV stations being received and that the headend operator chooses to register.

35. While the Commission upheld its previous decision to make all information in the TV bands database publicly available, it noted that the *Second MO&O* did not include specific text to codify this decision. The Commission therefore added a new paragraph to § 15.715 of the rules to specify that database administrators must provide a means to allow public access to the information in the database. Such access will be limited to the information that is required by the rules to be included in the databases and will not include any additional information that the database administrators may choose to collect. OET will advise the database administrators as necessary to implement this requirement. Codifying this rule does not impose any new costs or other burdens on database administrators because they were already required to provide the capability described.

**Other Matters**

36. OET designated ten parties as TV bands database administrators and requires them to attend workshops conducted by Commission staff. During the course of these workshops, the database administrators have noted that some rules require Commission interpretation and guidance to ensure that they are implemented consistently across all TV White Space databases. OET staff has provided guidance on how certain rules as written should be implemented by the database administrators. Information regarding these discussions, including any rule interpretations provided to the database administrators at these workshops, is posted on the Commission's Web site at *http://www.fcc.gov/encyclopedia/white-space-database-administration*. The Commission concluded that the rules should be modified to clearly state the requirements for protecting these services.

**TV Translator, Low Power TV and Class A TV Station Receive Sites**

37. The rules require that TV bands databases contain information on the location of receive sites for TV translator, low power TV, and Class A TV stations (collectively low power stations) and the channels of TV signals received for retransmission at such sites. The Commission's Consolidated Data Base System (CDBS) has the ability to store receive site information for low power stations, but the receive site information currently contained in the CDBS is incomplete or inaccurate and therefore not always reliable. For this reason, the Commission adopted rules that require low power stations to register their receive sites with the TV bands database administrators to obtain protection. Subsequent to the adoption of these rules, the Commission has become concerned that if it were to allow parties to register receive site information both in the TV bands database and the CDBS, there could be conflicts in the data between the CDBS and the database registrations due to data entry errors or updates to the

information in one database but not the other. The Commission therefore found it is necessary to provide for a single registry for low power station receive site information, and that registry is to be the CDBS. The Commission's staff has constructed a Web page interface that will allow licensees of low power stations to easily provide us with their correct receive channel information. The information collected through this Web page interface will be used to update the CDBS. The Commission will issue a public notice when the interface is available to the public and will provide instructions on how to access it.

38. In view of the Commission's decision to acquire and maintain all low power station receive site data by means of the new receive site update facility and the CDBS system, it no longer finds it necessary to require database administrators to provide a separate registration process for this information. In addition to relieving the database operators of a significant burden, this change will make the low power station receive site data in the CDBS more reliable and also avoid data conflicts between the CDBS and the database registration records. Accordingly, the Commission modified § 15.713(b)(2) of the rules to remove receive sites of TV translator, low power TV, and Class A TV stations from the list of facilities that are not contained in Commission databases and placing them in § 15.713(b)(1) in the list of facilities that are contained in Commission databases. The Commission also modified § 15.715(c) to remove TV translator receive sites as an example of facilities not contained in Commission databases. These rule changes are procedural in nature in that the Commission changed the manner in which low power TV receive site information is collected and placed in the TV bands databases, but not the protection afforded to receive sites. Thus, these changes do not require prior notice under the Administrative Procedure Act (APA).

**Protection of Radio Astronomy**

39. Section 15.712(h) of the rules prohibits the operation of TV bands devices within 2.4 kilometers of certain radio astronomy and other receive sites to prevent interference to operations at those locations. This rule section specifies the geographic coordinates of receive sites that were provided to the Commission by the National Telecommunications and Information Administration (NTIA) in 2005. NTIA recently discovered inaccuracies in the coordinates for several radio astronomy receive sites and filed a request with the Commission to correct these inaccuracies. In particular, it provided corrected coordinates for the Arecibo Observatory in Puerto Rico and the Table Mountain receive site in Colorado. NTIA also requested that the Commission modify the receive site coordinates listed in § 15.712(h) to match those in footnote US388 to the Table of Frequency Allocations in § 2.106 of the rules because it determined that the coordinates in that footnote are correct. The Commission found that NTIA's requested changes to this section will ensure that radio astronomy and other receive sites are protected against interference from TV bands devices and therefore updated the rules to reflect the correct coordinates. In addition, the Commission noted that § 15.712(h)(1) lists the Naval Radio Research Observatory in Sugar Grove, West Virginia as a protected site but does not specify its geographic coordinates. The Commission therefore revised this section to add the coordinates of that observatory. These rule revisions do not require TV bands devices to protect any additional radio astronomy sites or increase the size of the protected zones around them; they merely provide more precise geographic coordinates for the sites that TV bands devices were already required to protect. The Commission found that these changes are insignificant in nature and impact, and inconsequential to the industry and the public. Thus, these rule changes do not require prior notice under the APA.

**Final Regulatory Flexibility Analysis**

40. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (*NPRM*) in ET Docket No. 04–186,[2] and an additional IRFA was incorporated in the *First Report and Order and Further Notice of Proposed Rule Making* (FNPRM) in ET Docket No. 04–186.[3] The Commission sought written public comment on the proposals in the *NPRM* and in the *FNPRM,* including comment on the IRFAs. No comments were received in response to either IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *NPRM,* 19 FCC Rcd at 10018, 10048 (2004).

[3] *FNPRM,* 21 FCC Rcd 12266, 12299 (2006).

[4] *See* 5 U.S.C. 604.

*A. Need for, and Objectives of, the Third Memorandum Opinion and Order*

41. This Third Memorandum Opinion and Order responds to five petitions for reconsideration that were filed in response to the *Second Memorandum Opinion and Order* (''*Second MO&O*'') in this proceeding.[5] It eliminates the 76 meter limitation on the height above average terrain of the sites where fixed TV bands devices may operate and increases the maximum permitted antenna height above average terrain from 106 meters to 250 meters. The Third Memorandum Opinion and Order also replaces the current relative limit with a fixed limit for TV bands device emissions that fall in the 6 MHz channels adjacent to the operating channel. Devices operating at the maximum permitted power must suppress adjacent channel emissions to the same level that the current rules require, but devices operating at less than the maximum power do not have to suppress emissions below this level. However, the Third Memorandum Opinion and Order upholds the majority of the Commission's prior decisions permitting unlicensed broadband operations in the TV bands while making certain other minor changes and refinements to the rules for TV band devices. The Commission believes that these changes and clarifications to the rules will better ensure that licensed services are protected from interference while retaining flexibility for unlicensed devices to share spectrum with new services or to change frequencies if TV spectrum is reallocated for other purposes.

*B. Statement of Significant Issues Raised by Public Comments in Response to the IRFA*

42. There were no public comments filed that specifically addressed the rules and policies proposed in the IRFA.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

43. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

[5] *See Second Memorandum Opinion and Order* in ET Docket No. 04–186, 25 FCC Rcd 18661 (2010).

*D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

44. 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 herein.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] 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]

45. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.FN1 Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [10] In this category, the SBA has deemed a business manufacturing radio and television broadcasting equipment, wireless telecommunications equipment, or both, to be small if it has fewer than 750 employees.[11] For this category of manufacturing, Census data for 2007 show that there were 919 firms that operated that year. Of those establishments, 531 had between 1 and 19 employees; 240 had between 20 and 99 employees; and 148 had more than 100 employees.[12] Since 771 establishments had fewer than 100 employees, and since only 148 had more than 100 employees, the vast majority of manufacturers in this category would be considered small under applicable standards.

46. *Wireless Telecommunications Carriers (except satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[13] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[14] For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.[15] Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more.[16] Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[17] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[18] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

*E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

47. TV bands devices are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and the Third Memorandum Opinion and Order makes no change to that requirement. However, it makes certain changes to the technical requirements for TV bands devices, which are discussed.

*F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

48. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [19]

49. While the Third Memorandum Opinion and Order generally upholds the rules adopted in the *Second Memorandum Opinion and Order,* the Commission made certain changes to those rules. It believed those changes and clarifications would provide for improved protection of licensed services in the TV bands, resolve certain uncertainties in the rules, and provide manufacturers with greater flexibility in designing products to meet market demands.

50. The Commission eliminated the prohibition on fixed TV bands device operation at sites where the ground elevation is more than 76 meters above the average elevation of the surrounding terrain, while maintaining the current antenna height above ground limit of 30 meters. In place of the site elevation limit, the Commission adopted a requirement that a fixed device may operate with an antenna height above average terrain of up to 250 meters, which is an increase from the current antenna height above average terrain limit of 106 meters (30 meters antenna height above ground plus 76 meters site above average terrain). Under the new rule, a fixed TV bands device could operate from a site with an elevation of up to 220 meters above average terrain using an antenna height above ground of 30 meters, resulting in an antenna height above average terrain of 250 meters. In reaching this decision, the Commission considered the competing views from various parties on whether the ground elevation limit unnecessarily restricts the locations where fixed TV bands devices can operate and whether an increase in the maximum antenna height above ground and average terrain can allow greater coverage by fixed TV bands devices without causing

[6] 5 U.S.C. 604(a)(3).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[9] 15 U.S.C. 632.

[10] U.S. Census Bureau, 2002 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.*

[11] *See* 13 CFR 121.201, NAICS code 334220.

[12] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=300&-ds_name+EC0731I1&-_lang=en.*

[13] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[14] 13 CFR 121.201, NAICS code 517210.

[15] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[16] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[17] *See Trends in Telephone Service* at Table 5.3.

[18] *See id.*

[19] 5 U.S.C. 603(c)(1) through (4).

interference to authorized users of the TV bands. The Commission believes that the changes it adopted will allow for increased availability of wireless broadband services in rural and underserved areas while protecting television and other services that operate in the TV bands.

51. The Commission made certain changes to the technical requirements for TV bands devices. Specifically, it modified the limits for emissions that fall in TV channels adjacent to those where a TV bands device operates by specifying limits that are at fixed levels, rather than relative to the in-band power. This change simplifies compliance measurements, because it will no longer be necessary to compare the in-band and adjacent channel power, which had to be measured with two different bandwidths under the previous rules. Instead, compliance can be determined by directly measuring the adjacent channel power in a specified bandwidth for comparison to the limit. The rule changes that the Commission adopted also eliminate the need for devices operating at less than the maximum permitted power to suppress adjacent channel emissions to levels below those needed to prevent interference to other services in the TV bands. In reaching its decision to modify the adjacent channel emission limits, the Commission considered and rejected requests for a greater relaxation of the limit. The Commission found that the adopted limits are necessary to prevent interference to authorized services in and adjacent to the TV bands and to allow more efficient use of the TV spectrum by both licensed and unlicensed devices. The Commission recognized petitioners' arguments that tighter emission limits can result in higher equipment costs. However, the record indicated that at least one equipment manufacturer is capable of complying with the limits adopted in the *Second Memorandum Opinion and Order.*[20] The Commission noted that tighter out-of-band emission limits can allow users to operate in adjacent frequency bands with less geographic separation between them, thus enabling more efficient and intensive use of spectrum. Thus, it found that the benefits of tighter out-of-band emission limits outweigh the increase in equipment cost necessary to comply with the limits.

*G. Report to Congress*

52. The Commission will send a copy of the Third Memorandum Opinion and Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[21]

**Ordering Clauses**

53. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(c), 303(f), and 307 this Third Memorandum Opinion and Order *is hereby adopted.*

54. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g), 303(r), and 405, the petitions for reconsideration addressed herein *are granted* to the extent discussed and the remainder of requests in the petitions for reconsideration *are denied.*

55. Part 15 of the Commission's rules *is amended,* and such rule amendments shall be effective June 18, 2012.

56. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Third Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**List of Subjects in 47 CFR Part 15**

Communications equipment, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

## PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

■ 2. Section 15.709 is amended by revising paragraphs (a)(5), (b)(2), (c)(1) and (c)(2) to read as follows:

**§ 15.709 General technical requirements.**

(a) * * *

(5) The power spectral density from the TVBD shall not be greater than the following values when measured in any 100 kHz band during any time interval of continuous transmission.

(i) Fixed devices: 12.6 dBm conducted power. If transmitting antennas of directional gain greater than 6 dBi are used, this conducted power level shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(ii) Personal/portable device operating adjacent to occupied TV channels: −1.4 dBm EIRP.

(iii) Sensing-only devices: −0.4 dBm EIRP.

(iv) All other personal/portable devices: 2.6 dBm EIRP.

* * * * *

(b) * * *

(2) The transmit antenna used with fixed devices may not be more than 30 meters above the ground. In addition, fixed devices may not be located at sites where the antenna height above average terrain is more than 250 meters. The HAAT is to be calculated by the TV bands database that the device contacts for available channels using computational software employing the methodology in § 73.684(d) of this chapter.

* * * * *

(c) * * *

(1) In the television channels immediately adjacent to the channel in which the TVBD is operating, emissions from the TVBD shall not exceed the following levels.

(i) Fixed devices: −42.8 dBm conducted power.

(ii) Personal/portable device operating adjacent to occupied TV channels: −56.8 dBm EIRP.

(iii) Sensing-only devices: −55.8 dBm EIRP.

(iv) All other personal/portable devices: −52.8 dBm EIRP.

(2) Emission measurements in the adjacent channels shall be performed using a minimum resolution bandwidth of 100 kHz with an average detector. A narrower resolution bandwidth may be employed near the band edge, when necessary, provided the measured energy is integrated to show the total power over 100 kHz.

* * * * *

■ 3. Section 15.711 is amended by revising paragraph (b)(3)(iv) to read as follows:

**§ 15.711 Interference avoidance methods.**

* * * * *

(b) * * *

(3) * * *

(iv)(A) A Mode I personal/portable TVBD may only transmit upon receiving a list of available channels from a fixed or Mode II TVBD. A fixed or Mode II device may provide a Mode I device with a list of available channels only after it contacts its database, provides the database the FCC Identifier (FCC ID) of the Mode I device requesting available channels, and receives

[20] *See* Adaptrum *ex parte* dated March 8, 2011.

[21] *See* 5 U.S.C. 801(a)(1)(A).

verification that the FCC ID is valid for operation.

(B) A Mode II device must provide a list of channels to the Mode I device that is the same as the list of channels available to the Mode II device.

(C) A fixed device may provide a list of available channels to a Mode I device only if the fixed device HAAT as verified by the TV bands database does not exceed 106 meters. The fixed device must provide a list of available channels to the Mode I device that is the same as the list of channels available to the fixed device, except that a Mode I device may operate only on those channels that are permissible for its use under § 15.707. A fixed device may also obtain from a database a separate list of available channels that includes adjacent channels that would be available to a Mode I personal/portable device and provide that list to the Mode I device.

(D) To initiate contact with a fixed or Mode II device, a Mode I device may transmit on an available channel used by the fixed or Mode II TVBD or on a channel the fixed or Mode II TVBD indicates is available for use by a Mode I device on a signal seeking such contacts. At least once every 60 seconds, except when in sleep mode, *i.e.,* a mode in which the device is inactive but is not powered-down, a Mode I device must either receive a contact verification signal from the Mode II or fixed device that provided its current list of available channels or contact a Mode II or fixed device to re-verify/re-establish channel availability. A Mode I device must cease operation immediately if it does not receive a contact verification signal or is not able to re-establish a list of available channels through contact with a fixed or Mode II device on this schedule. In addition, a Mode II device must re-check/re-establish contact with a fixed or Mode II device to obtain a list of available channels if it loses power. Collaterally, if a Mode II device loses power and obtains a new channel list, it must signal all Mode I devices it is serving to acquire and use a new channel list.

* * * * *

■ 4. Section 15.712 is amended by revising paragraph (a)(2), adding paragraph (a)(3) and revising paragraph (h) to read as follows:

**§ 15.712 Interference protection requirements.**

* * * * *

(a) * * *

(2) *Required separation distance.* TVBDs must be located outside the contours indicated in paragraph (a)(1) of this section of co-channel and adjacent channel stations by at least the minimum distances specified in the following table. Personal/portable TVBDs operating in Mode II must comply with the separation distances specified for an unlicensed device with an antenna height of less than 3 meters. Alternatively, Mode II personal/portable TVBDs may operate at closer separation distances from the contour of adjacent channel stations than this table permits, including inside the contour of adjacent channel stations, provided the power level is reduced to 40 mW or less as specified in § 15.709(a)(2).

| Antenna height above average terrain of unlicensed device | Required separation (km) from digital or analog TV (full service or low power) protected contour | |
|---|---|---|
| | Co-channel (km) | Adjacent channel (km) |
| Less than 3 meters | 4.0 | 0.4 |
| 3–Less than 10 meters | 7.3 | 0.7 |
| 10–Less than 30 meters | 11.1 | 1.2 |
| 30–Less than 50 meters | 14.3 | 1.8 |
| 50–Less than 75 meters | 18.0 | 2.0 |
| 75–Less than 100 meters | 21.1 | 2.1 |
| 100–Less than 150 meters | 25.3 | 2.2 |
| 150–Less than 200 meters | 28.5 | 2.3 |
| 200–250 meters | 31.2 | 2.4 |

(3) The antenna height above ground for a fixed TVBD may not exceed 30 meters.

* * * * *

(h) * * *

(1) The Naval Radio Research Observatory in Sugar Grove, West Virginia at 38 30 58 N and 79 16 48 W.

(2) The Table Mountain Radio Receiving Zone (TMRZ) at 40 08 02 N and 105 14 40 W.

(3) The following facilities:

| Observatory | Latitude (deg/min/sec) | Longitude (deg/min/sec) |
|---|---|---|
| Allen Telescope Array | 40 49 04 N | 121 28 24 W |
| Arecibo Observatory | 18 20 37 N | 066 45 11 W |
| Green Bank Telescope (GBT) | 38 25 59 N | 079 50 23 W |
| Very Large Array (VLA) | Rectangle between latitudes 33 58 22 N and 34 14 56 N, and longitudes 107 24 40 W and 107 48 22 W | |
| Very Long Baseline Array (VLBA) Stations: | | |
| Pie Town, NM | 34 18 04 N | 108 07 09 W |
| Kitt Peak, AZ | 31 57 23 N | 111 36 45 W |
| Los Alamos, NM | 35 46 30 N | 106 14 44 W |

| Observatory | Latitude (deg/min/sec) | Longitude (deg/min/sec) |
|---|---|---|
| Ft. Davis, TX | 30 38 06 N | 103 56 41 W |
| N. Liberty, IA | 41 46 17 N | 091 34 27 W |
| Brewster, WA | 48 07 52 N | 119 41 00 W |
| Owens Valley, CA | 37 13 54 N | 118 16 37 W |
| St. Croix, VI | 17 45 24 N | 064 35 01 W |
| Hancock, NH | 42 56 01 N | 071 59 12 W |
| Mauna Kea, HI | 19 48 05 N | 155 27 20 W |

■ 5. Section 15.713 is amended by adding paragraphs (b)(1)(ix) through (xi), removing paragraphs (b)(2)(ii) through (iv), redesignating paragraphs (b)(2)(v) through (vi) as paragraphs (b)(2)(ii) and (iii), and revising paragraph (e)(6) to read as follows:

**§ 15.713 TV bands database.**

* * * * *

(b) * * *

(1) * * *

(ix) Class A television station receive sites.

(x) Low power television station receive sites.

(xi) Television translator station receive sites.

* * * * *

(e) * * *

(6) A fixed device with an antenna height above ground that exceeds 30 meters or an antenna height above average terrain (HAAT) that exceeds 250 meters shall not be provided a list of available channels. The HAAT is to be calculated using computational software employing the methodology in § 73.684(d) of this chapter.

* * * * *

■ 6. Section 15.715 is amended by revising paragraph (c) and adding paragraph (m) to read as follows:

**§ 15.715 TV bands database administrator.**

* * * * *

(c) Establish a process for registering fixed TVBDs and registering and including in the database facilities entitled to protection but not contained in a Commission database, including MVPD receive sites.

* * * * *

(m) Provide a means to make all information the rules require the database to contain publicly available, including fixed TVBD registrations and voluntarily submitted protected entity information.

[FR Doc. 2012–11906 Filed 5–16–12; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA–2012–0058]**

**RIN 2127–AL07**

## Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This final rule makes technical amendments to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Specifically, this document updates references to the Pipeline and Hazardous Materials Safety Administration (PHMSA) (formerly the Research and Special Programs Administration) regulations that are included in the requirements for pressure vessels and explosive devices used in occupant crash protection systems, such as air bags. As a result of various rulemakings that reorganized the relevant regulations, the references contained in FMVSS No. 208 are out of date. This final rule updates the references to the PHMSA regulations.

This document also makes a correction to the air bag warning label requirements for vehicle dashboards and steering wheel hubs to make clear that the general warning label requirements for vehicles with air bags are superseded by different, specific requirements if the vehicle is certified to meet certain advanced air bag requirements. As written now, the general warning label requirements contain an explicit exception for the warning label requirements for vehicles certified to meet these advanced air bag requirements before December 1, 2003, but do not reference the warning label requirements for vehicles certified to meet these requirements on or after December 1, 2003.

This document does not make any substantive changes to the requirements specified in FMVSS No. 208.

**DATES:** This rule is effective June 18, 2012.

Petitions for reconsideration must be received by July 2, 2012.

**ADDRESSES:** Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. William H. Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992.

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

FMVSS No. 208 (49 CFR 571.208) specifies requirements for the protection of vehicle occupants in crashes and includes equipment requirements for restraint systems. This document makes technical amendments to several of the provisions within this standard, specifically the requirements for pressure vessels and explosive devices, which are located at S9.1 and S9.2, and the air bag warning label requirements, which are located at S4.5.1.

S9.1 and S9.2 were promulgated in 1972 with the purpose of regulating occupant crash protection systems, such as air bags, that contain explosive materials or pressure vessels by imposing directly on manufacturers the obligation to conform to Federal hazardous materials regulations.[1] S9.1 specifies that pressure vessels shall conform to certain requirements for Specification 39 non-reusable (non-refillable) cylinders found at 49 CFR 178.65. S9.2 specifies requirements for explosive devices and, in particular, requires that such devices not exhibit any of the characteristics prohibited by the Federal regulation listing forbidden explosives, which, at the time S9.2 was adopted, was found at 49 CFR 173.51.

Since S9.1 and S9.2 were adopted, the hazardous materials regulations referenced in these paragraphs have

[1] 37 FR 9222 (May 6, 1972).

been reorganized and, in some cases, relocated. On December 21, 1990, the regulation listing forbidden explosives (49 CFR 173.51) was redesignated as 49 CFR 173.54.[2] On May 23, 1996, the pressure vessel requirements in 49 CFR 178.65 were reorganized,[3] and on August 8, 2002, a subreferenced provision concerning pressure relief devices (49 CFR 173.34(d)) was moved into 49 CFR 173.301.[4]

As a result of these reorganizations, the references in FMVSS No. 208 are no longer accurate. This notice updates the references contained in S9.1 and S9.2 of this standard. It does not make any substantive changes to the requirements specified therein. In particular, we note that when the hazardous materials regulations referenced in S9.1 and S9.2 were reorganized or redesignated, minor textual changes were made to those referenced sections. However, these textual changes did not result in any substantive changes. Accordingly, the substantive requirements of S9.1 and S9.2 remain the same.

The need to correct the references in S9.1 of FMVSS No. 208 was the subject of a petition for rulemaking submitted by the North American Automotive Hazardous Material Action Committee on October 7, 2004. That organization specifically petitioned NHTSA to update paragraph S9.1 of FMVSS No. 208. This document grants that petition. We had also previously been contacted by a representative of Takata Corporation concerning this matter.

In addition to updating the references in S9.1 and S9.2, this final rule makes a technical amendment to S4.5.1(e) of FMVSS No. 208, which specifies requirements for air bag warning labels on vehicle dashboards and steering wheel hubs. S4.5.1(e)(1) specifies label requirements for all vehicles equipped with air bags except as provided in S4.5.1(e)(2). S4.5.1(e)(2) specifies label requirements for vehicles certified to meet certain advanced air bag requirements before December 1, 2003. S4.5.1(e) contains a third set of label requirements in S4.5.1(e)(3), which specifies the label requirements for vehicles certified to meet the specified advanced air bag requirements on or after December 1, 2003. However, the text of S4.5.1(e)(1) does not include an exception for S4.5.1(e)(3).

On January 25, 2005, we received a request for interpretation from Toyota Motor North America, Inc. (Toyota) concerning S4.5.1(e).[5] Toyota's concern was that S4.5.1(e)(1) makes an exception for S4.5.1(e)(2) but not for S4.5.1(e)(3). Arguably, as written, both S4.5.1(e)(1) and S4.5.1(e)(3) would apply to vehicles certified to meet certain advanced air bag requirements on or after December 1, 2003. Toyota indicated its belief that it was not NHTSA's intention to require vehicles to have both labels, which are very similar.

We responded to Toyota's request for interpretation on March 14, 2005.[6] We confirmed Toyota's understanding and agreed that it was not the agency's intention to require vehicles to have both types of labels. We indicated that the agency intended for the labeling requirements in S4.5.1(e)(2) and S4.5.1(e)(3) to supersede the labeling requirement in S4.5.1(e)(1) for vehicles certified to meet certain advanced air bag requirements and stated that the exception identified in S4.5.1(e)(1) should include both S4.5.1(e)(2) and S4.5.1(e)(3). This amendment adds S4.5.1(e)(3) as an exception to the requirements of S4.5.1(e)(1), consistent with our letter of interpretation to Toyota. This is a technical correction and does not change any of the substantive labeling requirements.

## II. Rulemaking Analyses and Notices

Section 553 of the Administrative Procedure Act (5 U.S.C. 553) provides that when an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). NHTSA has determined that there is good cause for making these technical amendments final without notice and an opportunity for public comment. These technical amendments update the cross-references to Federal hazardous materials regulations in paragraphs S9.1 and S9.2 of FMVSS No. 208 and correct the language in paragraph S4.5.1(e) of that standard. The amendments do not alter the substance of the amended sections nor do they alter the requirements of FMVSS No. 208. Accordingly, notice and public comment are unnecessary. For the same reasons, NHTSA has determined that there is good cause for these amendments to go into effect 30 days after publication in the **Federal Register**.

The agency has discussed the relevant requirements of Executive Order 12866, Executive Order 13563, DOT Regulatory Policies and Procedures, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211(Energy Effects), as applicable, in the underlying substantive rules establishing and amending the affected sections of FMVSS No. 208. Those discussions are not affected by these amendments.

*Regulatory Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

**List of Subjects in 49 CFR Part 571**

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

For the reasons stated in the preamble, the National Highway Traffic Safety Administration, Department of Transportation, amends 49 CFR part 571 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

[2] *Final Rule; Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative,* 55 FR 52402 (Dec. 21, 1990).

[3] *Final Rule; Restructuring of Cylinder Specifications Requirements,* 61 FR 25940 (May 23, 1996).

[4] *Final Rule; Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders,* 67 FR 51626 (Aug. 8, 2002). 49 CFR 173.301 includes additional requirements beyond those for pressure relief devices. Accordingly, the regulatory text of S9.1 has been amended in this final rule so that only the pressure relief device requirements of that section are referenced.

[5] Docket No. NHTSA–2005–20694–0002.

[6] Docket No. NHTSA–2005–20694–0001.

**Authority:** 49 USC 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by revising the first sentence of S4.5.1(e)(1), S9.1, and the first sentence of S9.2 to read as follows:

**§ 571.208 Standard No. 208; Occupant crash protection.**

* * * * *

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(e) *Label on the dashboard.* (1) Except as provided in S4.5.1(e)(2) or S4.5.1(e)(3), each vehicle that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. * * *

* * * * *

S9.1 *Pressure vessels.* A pressure vessel that is continuously pressurized shall conform to the requirements of §§ 178.65(a), 178.65(c)(2), 178.65(d), 178.65(e)(1), and 178.65(e)(2) of this title; and to the pressure relief device requirements of §§ 173.301(a)(2), 173.301(a)(3) and 173.301(f) of this title. It shall not leak or evidence visible distortion when tested in accordance with § 178.65(f)(1) of this title and shall not fail in any of the ways enumerated in § 178.65(f)(2) of this title when hydrostatically tested to destruction. It shall not crack when flattened in accordance with § 178.65(g) of this title to the limit specified in § 178.65(g)(4) of this title.

S9.2 *Explosive devices.* An explosive device shall not exhibit any of the characteristics prohibited by § 173.54 of this title. * * *

* * * * *

Issued: May 10, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2012–11945 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 77, No. 96
Thursday, May 17, 2012

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 16

**[Docket No. FAA–2012–0176]**

**RIN 2120–AJ97**

## Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Retrospective Regulatory Review); Reopening of Comment Period

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

**ACTION:** Notice of proposed rulemaking (NPRM); Reopening of comment period.

**SUMMARY:** This action reopens the comment period for an NPRM that was published on March 5, 2012. In that document, the FAA proposed to update, simplify, and streamline rules of practice and procedure for filing and adjudicating complaints against federally-assisted airports. The Airports Council International-North America (ACI–NA), an association representing the local, regional and state governing bodies that own and operate the principal airports served by scheduled air carriers in North America, has requested additional time to complete its review and coordinate comments received from members that would be impacted by the proposed changes.

**DATES:** The comment period for the NPRM published on March 5, 2012 (77 FR 13027) closed May 4, 2012, and is reopened until June 7, 2012.

**ADDRESSES:** You may send comments identified by docket number FAA–2012–0176 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Melissa Loughlin, ARM–204, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–4055; email *Melissa.Loughlin@faa.gov*.

**SUPPLEMENTARY INFORMATION:** See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

### Background

On March 5, 2012, the FAA issued Notice No. 12–02, entitled ''Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Retrospective Regulatory Review)'' (77 FR 13027). The FAA requested that comments on that proposal be received on or before May 4, 2012.

By petition dated May 4, 2012, ACI–NA, an association representing the local, regional and state governing bodies that own and operate the principal airports served by scheduled air carriers in North America, requested that the FAA extend the comment period for Notice No. 12–02 for three weeks. The petitioner stated that additional time would allow it to coordinate comments with representative airports, and contribute to meaningful input on the proposed rule.

### Reopening of Comment Period

The FAA has reviewed the request made by ACI–NA for additional time to comment on Notice No. 12–02. The petitioner has shown a substantive interest in the proposed rule and good cause for the additional time to comment. The FAA has determined that reopening the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 12–02 is reopened until June 7, 2012.

### Additional Information

*A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the

closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

*B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on May 11, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

[FR Doc. 2012–11988 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0314]**

**RIN 1625–AA00**

## Safety Zone; Carnival Fireworks Display, Nantasket Beach, Hull, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the navigable waters off of Nantasket Beach in the vicinity of Hull, MA for a Carnival fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 18, 2012.

Requests for public meetings must be received by the Coast Guard on or before May 24, 2012. The Coast Guard anticipates that this proposed rule will be effective from 9:00 p.m. to 10:00 p.m. on June 23, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0314 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@uscg.mil* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone 617–223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0314), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0314'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0314'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of comments received into any of

our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one by using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Basis and Purpose**

The legal basis for the proposed rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

This proposed safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**Discussion of Proposed Rule**

Hull Youth Football is sponsoring a Carnival fireworks display on the waters off of Nantasket Beach in the vicinity of Hull, MA. The COTP Boston has determined that fireworks displays in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. Establishing a safety zone around the location of this fireworks event will help ensure the safety of spectators, vessels and other property and help minimize the associated risks. This proposed safety zone will encompass a 450-foot radius around the firework barge.

The fireworks display will occur from approximately 9:00 p.m. until 10:00 p.m. on June 23, 2012. To ensure public safety, the proposed safety zone will be enforced immediately before, during, and immediately after the fireworks launch. If the event is cancelled due to inclement weather, then the proposed safety zone will not be enforced.

All persons and vessels shall comply with the instructions of the COTP Boston or the designated on-scene representative. Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the COTP or the designated on-scene representative. The COTP Boston or the on-scene representative may be contacted via VHF Channel 16.

The Final Rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

Public notifications will be made prior to the event via appropriate means, and may include the Local Notice to Mariners and marine information broadcasts.

**Regulatory Analyses**

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

**Executive Order 12866 and Executive Order 13563**

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the limited time that vessels will be restricted from the fireworks display area. The safety zone will be in effect for approximately one hour during the evening hours. The Coast Guard expects minimal adverse impact to mariners from the activation of the zone as information on the event will be extensively advertised in the public, affected mariners may request authorization from the COTP Boston or the designated on-scene representative to transit the zone, and advance notification will be made to the maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of water off of Nantasket Beach in the vicinity of Hull, MA during the effective period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on a single day during the late evening and vessels will be able to transit around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking.

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 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**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 proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishment of a safety zone on waters off of Nantasket Beach, Hull, MA during a firework works display. This proposed rule is categorically excluded from further review under paragraph (34(g) under figure 2–1, of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, waterways.

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

2. Add § 165.T01–0314 to read as follows:

**§ 165.T01–0314 Safety Zone; Carnival Fireworks Display, Nantasket Beach, Hull, MA.**

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters from surface to bottom, within a 450-foot radius of position 42°16′40″ N, 070°51′46″ W. This position is located approximately 500-feet off of Nantasket Beach, Hull, MA.

(b) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf.

(c) *Effective Period.* This rule will be effective and will be enforced from 9:00 p.m. to 10:00 p.m. on June 23, 2012.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit, or anchor within the safety zone without the permission of the COTP Boston or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP Boston or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

(5) Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Boston or the designated on-scene representative.

Dated: May 4, 2012.

**J.N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2012–11922 Filed 5–16–12; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2010–0012]**

**RIN 1625–AA00**

## Safety Zones, Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0; New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a moving safety zone around large cruise ships as they transit the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0 and the Southwest Pass Sea Buoy. The proposed moving safety zone extends from bank to bank encompassing one-mile ahead and one-mile astern of each large cruise ship. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 18, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0012 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Lieutenant Commander (LCDR) Marcie L. Kohn, Sector New Orleans, Coast Guard; telephone 504–365–2281, email *Marcie.L.Kohn@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0012), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means as instructed in the **ADDRESSES** section. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2010–0012'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2010–0012'' and click ''Search'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one on or before June 18, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Marcie L. Kohn at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### Basis and Purpose

The Coast Guard proposes to establish a moving safety zone around each large cruise ship as it transits the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0, and the Southwest Pass Sea Buoy to address the increasing risk to safe navigation. For the purpose of this rule, the term ''large cruise ship'' is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or

disembarked in the United States or its territories.

The marine transportation system on the lower Mississippi river has seen a sustained growth over the years and there are more vessels on the river than ever before. If a marine accident occurs involving a large cruise ship there is a significantly higher potential for loss of life than with any other type of commercial vessel. Therefore to mitigate the risks and consequences associated with the higher traffic, the reduction of navigable space, and to protect lives, the Coast Guard proposes a moving safety zone around each large cruise ship. This proposed rule is intended to establish early passing or overtaking arrangements thus increasing the time available for safe maneuvering.

**Discussion of Proposed Rule**

Nothing in this proposed rule supersedes the United States Coast Guard Navigation Rules. This rule proposes implementing a moving safety zone extending from bank to bank, encompassing one-mile ahead and one-mile astern of each large cruise ship transiting the Lower Mississippi River between mile marker 96.0 and the Southwest Pass Sea Buoy. This proposed rule is intended to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River. All persons or vessels will be prohibited from entering this safety zone, with the following exceptions. Moored or anchored vessels will be permitted to remain in their current positions. Fleet vessels will be permitted to continue operations. Permission to enter the safety zone will be obtained by making passing arrangements with the pilot on board the large cruise ship. The Captain of the Port New Orleans, (COTP) will use broadcast notices to mariners to notify vessel operators when the safety zone is in place. The pilot onboard the large cruise ship will be authorized to allow other vessels to enter the safety zone when necessary.

**Regulatory Analyses**

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

*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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. The impacts on routine navigation are expected to be minimal. The proposed moving safety zones will not interfere with a vessel's ability to make passing and overtaking arrangements. Routine navigation around and near the proposed safety zones will not be impacted. The proposed moving safety zone is intended to enable early notification of passing or overtaking arrangements, providing additional time and opportunity to negotiate navigational arrangements and to maneuver without causing delay in transit for both the large cruise ship and the other vessels operating in the area.

*Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed moving safety zones are intended to enable early notification that passing or overtaking arrangements may be necessary, providing additional time and opportunity to negotiate navigational arrangements, giving both vessels sufficient time to maneuver without causing delay in transit.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 96.0, New Orleans, LA and the Southwest Pass Sea Buoy during large cruise ship transits.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant Commander (LCDR) Marcie L. Kohn, Sector New Orleans, at 504–365–2281 or email *Marcie.L.Kohn@uscg.mil.*

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 LCDR Marcie L. Kohn. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

*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 proposed rule under that Order and have determined that it does not have implications for federalism.

*Unfunded Mandates Reform Act*

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

*Taking of Private Property*

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

*Civil Justice Reform*

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

*Protection of Children*

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

*Indian Tribal Governments*

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

*Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

*Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing, disestablishing or changing a regulated navigation area and as such is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.839 to read as follows:

### § 165.839 Safety Zone; Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, LA.

(a) *Location.* Within the Lower Mississippi River and Southwest Pass, moving safety zones are established around all large cruise ships transiting between the Southwest Pass Entrance Lighted Buoy ''SW'', at approximate position 28[deg]52[min]42[sec] N, 89[deg]25[min]54[sec] W [NAD 83] and Lower Mississippi River mile marker 96.0 in New Orleans, Louisiana. The moving safety zone extends bank to bank, encompassing all waters one-mile ahead and one-mile astern of a large cruise ship. The zone remains in effect during the entire transit of the large cruise ship.

(b) *Definitions.* For the purpose of this rule, the term ''large cruise ship'' is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the Safety Zone except for vessels authorized by the Captain of the Port or Designated Representatives, except as provided for in paragraph (c)(2) of this section.

(2) For this section the Pilot directing the movement of the large cruise ship under the authority of the master has the authority to allow other vessels to enter the safety zone when necessary.

(2) All vessels are prohibited from entering this safety zone unless authorized as follows:

(i) Vessels that have made suitable passing or overtaking arrangements with the pilot onboard the large cruise ship may enter into this safety zone in accordance with those agreed upon arrangements.

(ii) Moored vessels or vessels anchored in a designated anchorage area may remain in their current moored or anchored position while the large cruise ship transits the area.

(iii) Barge Fleets or vessels working a fleet may continue their current operations while the large cruise ship transits the area.

(3) Vessels requiring a deviation from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365–2210.

Dated: March 26, 2012.

**P.W. Gautier,**

*Captain, U.S. Coast Guard, Captain of the Port New Orleans.*

[FR Doc. 2012–11923 Filed 5–16–12; 8:45 am]

**BILLING CODE 9110–04–P**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

**[Docket No. 2012–3]**

## Registration of Copyright: Definition of Claimant

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office proposes to amend its regulations governing the definition of a ''claimant'' for purposes of copyright registration by eliminating the footnote to the definition of a ''claimant'' in § 202.3(a)(3)(ii). The footnote currently extends the definition of a claimant to include individuals or entities that have obtained the contractual right to claim legal title to copyright in an application for copyright registration. This amendment would clarify that the copyright claimant must be either the author of the work, or a person or organization that has obtained ownership of all of the exclusive rights initially belonging to the author. The Copyright Office believes that the footnote creates considerable legal uncertainty while offering no clear benefits to the registration system. Removing it will foster the use of other available registration options that create a more meaningful public record.

**DATES:** Written comments are due July 16, 2012. Reply comments are due August 15, 2012.

**ADDRESSES:** The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/claimantfn/*. The online form contains fields for required information including the name and organization of the commenter, as applicable, and the ability to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8125 for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Robert Kasunic, Deputy General Counsel, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Fax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** The Copyright Act specifies certain conditions and requirements for copyright registration. *See* generally, 17 U.S.C. 408 and 409. Among the requirements of section 409 is that an application for registration must identify the name and address of the copyright claimant. The Copyright Act does not define the term ''claimant.''

On January 5, 1978, the Copyright Office published interim regulations that include a definition of copyright ''claimant'' for purposes of copyright registration. 43 FR 965 (January 5, 1978) (hereinafter, ''Interim Regulation''). Section 202.3(a)(3) states:

For the purposes of this section, a copyright *claimant* is either:

(i) The author of the work;

(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.

The Interim Regulation also included a footnote at the end of this definition that stated: ''This category includes a person or organization that has obtained, from the author or from an entity that has obtained ownership of all rights initially belonging to the author, the contractual right to claim legal title to the copyright in an application for copyright registration.''

Unfortunately, neither the Interim Regulation nor the **Federal Register** notice announcing it provided an explanation for the footnote and one can therefore only speculate as to the reason it was crafted. Moreover, the right to register a work is not one of the section 106 exclusive rights that would entitle a person or entity to be considered an owner of a copyright. That said, viewed in context, it is at least possible that the footnote was designed to accommodate registration problems that could occur under the new principle of divisibility of copyright embraced by the Copyright Act of 1976.

The 1909 Act was silent on the divisibility of copyright rights, although it used the singular form when addressing both ''copyright'' and ''copyright proprietor. '' *See, e.g.,* 17 U.S.C. 2, 3, 9, 10, and 11 (1909 Act), available at: *http://www.copyright.gov/history/1909act-1973.pdf.* Courts interpreted the bundle of exclusive rights under the 1909 Act to be indivisible, *i.e.,* individual rights (such as the right to copy a work or the right to perform a work publicly) could not be assigned to different persons or entities. *See, e.g., Goldwyn Pictures Corp.* v. *Howells Sales Co.,* 282 F. 9 (2d Cir. 1922); *M. Witmark & Sons* v. *Pastime Amusement Co.,* 298 F. 470 (E.D.S.C. 1924); *New Fiction Publishing Co.* v. *Star Co.,* 220 F. 994 (S.D.N.Y. 1915). The reality that copyrights could be assigned in whole but not in part led to a strained and illogical marketplace: An author could (and frequently did) disaggregate his copyright for the benefit of multiple parties if licensing rights on a nonexclusive basis, but could not do so when assigning or otherwise offering his rights on an exclusive basis. Moreover, the legitimate rights of licensees were often confused or inadequate in the context of litigation. Former Register of Copyrights Abraham Kaminstein highlighted the issue in 1960 in a Copyright Office Study for the Copyright Revision Process:

> Every major bill to revise the copyright law first enacted in 1909 has included provisions for divisibility as one of the three or four crucial issues. For a time, authors believed divisibility so vital to their interests that they made it their most important legislative goal.

Kaminstein, Divisibility of Copyrights, Copyright Off. Study No. 11 (1960), available at: *http://www.copyright.gov/history/studies/study11.pdf.*

Indeed, the revised law, the Copyright Act of 1976, represented a sea change, as the ''first explicit statutory recognition of the principle of divisibility of copyright in our law.'' Copyright Law Revision, H.R. Rep. 94–1476 at 123 (1976). Under section 201(d)(1) of the 1976 Act, Congress specified that ''copyright ownership may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.'' 17 U.S.C. 201(d)(1) In subsection 201(d)(2), Congress further stated that ''[a]ny of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified in section 106, may be transferred as provided by clause (1) and owned separately. The owner of any exclusive right is entitled, to the extent of that right, to all of the protection and remedies afforded to the copyright owner by this title.'' 17 U.S.C. 201(d)(2). *See also,* 17 U.S.C. 101 ''copyright owner'' (''Copyright owner, with respect to any one of the exclusive

rights comprised in a copyright, refers to the owner of that particular right'') and ''transfer of copyright ownership'' (''A ''transfer of copyright ownership'' is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license'').

Implementing the principle of divisibility into the registration system of the Copyright Office presented its own set of challenges, both conceptual and practical. For example, should an owner of an individual right be entitled individually to register a claims to that particular right? How many registrations should be available for any particular work? *See,* Notice of Inquiry on Applications for Registration of Claim of Copyright under Revised Copyright Act, 42 FR 48944 (September 26, 1977) (raising these and other questions).

The 1978 interim regulations resolved many of these questions. They established a general rule that there should be only one registration per work and that the transfer of ownership of exclusive rights could be adequately addressed through the Office's recordation system. Interim Regulation, 43 FR 965 (January 5, 1978). However, neither the 1977 Notice nor the Interim Regulation explained the inclusion of the footnote. In fact, the Interim Regulation acknowledged that a claimant should be defined *narrowly:*

> Prompted by the implications of that Notice, several comments, including a persuasive practical and legal analysis prepared by the Authors League of America, Inc. strongly urged that the copyright ''claimant'' to be identified in an application and registration under section 409(c) of the Act not be equated with the owner of one or more, but less than all, of the rights under a copyright. We agree with the view expressed in these comments; we do not believe that the concept of ''divisibility of copyright'' was intended to allow the owner of an individual right or rights to claim, or appear to claim, on our records, ownership of the entire copyright. As pointed out in the comments, such a result would lead to a misleading and inaccurate public record, and subvert the purpose of the registration system. Accordingly, interim § 202.3(a)(3) makes clear that the copyright ''claimant'' for purposes of copyright registration is the author of the work for which registration is sought, or a person or organization that has obtained all rights under the copyright initially belonging to the author.

*Id.*

The contradiction between the above passage and the footnote is difficult to explain. Conceivably, there was concern that when an author possessing the initial unified bundle of rights fails to register a work before transferring ownership in one or more of those exclusive rights (or a subpart of an exclusive right), it might appear that a proper claimant could not exist—the author, having divested his or her interest in an exclusive right would no longer own all rights, and the owner of a single exclusive right would not be eligible to be a claimant under the regulatory definition. However, this view is incorrect, because an author may always be named as a proper claimant in a work, even when an author no longer owns all of the exclusive rights in a copyright. This is true even if an author transfers *all* rights in a work, because an author may always have a reversionary or beneficial interest in the work. *See e.g.*, 17 U.S.C. 304(c) and 203. Where an author transfers an exclusive right, either the author or the owner of an exclusive right may submit an application for registration listing the author as both the author and the claimant in the work.[1] *See* 37 CFR 202.1(a)(3).[2] Once a work listing the author and a proper claimant is registered, the work as a whole is registered, including all of the divisible exclusive rights (and subparts therein) previously or later transferred. Regardless of when the disaggregation of the exclusive rights occurs—either before or after registration—the author may always be listed as a proper copyright claimant in an application for registration.[3] After registration for the work has occurred, any document relating to that registered work, such as a transfer of an exclusive right, may be recorded with the Copyright Office.

Thus, the existence of the footnote cannot be justified by reference to cases where the original author no longer owns all (or any) of the rights in the work. However, the footnote may have been rooted in another, more complicated situation faced by the authors of collective works. Where an author of a contribution to a collective work assigns one (or perhaps a few) of the exclusive rights to the publisher of a collective work, such as an article contributed to a serial issue, how could the collective work author register its copyright interest in the contribution? If the publisher registers the collective work, the registration could cover the selection and arrangement of the articles, along with the articles authored by the collective work author, and those works for which the collective work author owns all of the exclusive rights. But the registration would not extend to those works contained in the collective work for which the collective work author owns less than all rights. *See, e.g., Morris* v. *Business Concepts, Inc.,* 259 F.3d 65, 70 (2d Cir. N.Y. 2001). As the Second Circuit makes clear in *Morris,* the fact that a registration of a collective work does not cover every work contained in that collective work in no way precludes protection for, or registration of, a component work for which all rights were not transferred. Either the author of the component work or the collective work author, filing on behalf of the author/claimant, would simply be required to register such component works in a separate registration. *Id.,* at 71–72.

Although separate registration is available for unregistered contributions to works for which less than all rights have been transferred, the collective work author would likely find it preferable to submit one application to cover every unregistered work contained in the collective work. Under the rule stated in the footnote, collective work authors may accomplish this if they received the contractual right to claim legal title for purposes of registration.

The principal problem with this approach is that it would seem to allow a person or entity to claim title for purposes of copyright registration even if such a person or entity was not in fact the owner of *any* exclusive rights. While an argument could be made that the 1976 Act allows the owner of an exclusive right to claim the copyright as a copyright owner,[4] there is no clear

[1] Where the owner of an exclusive right submits a claim listing the author as author and claimant, the owner of the exclusive right would list himself or herself (or his or her agent) as the correspondent or person certifying the application. *See,* 37 CFR 202.1(c)(2)(i). Moreover, to provide a public record of the transfer of one or more exclusive rights from the author/claimant to the transferee, the owner of the exclusive right could record the document transferring rights with the Copyright Office. *See,* 17 U.S.C. 205.

[2] ''(3) For the purposes of this section, a copyright *claimant* is either:

(i) The author of a work;

(ii) A person or organization that has obtained ownership of all rights under the copyright initially belonging to the author.''

(Emphasis in original; footnote omitted.)

[3] In discussions with former Copyright Office staff members involved in the rulemaking that led to the Interim Regulations, the Office has heard two theories as to why the footnote was included: To address issues involving publishers of periodicals who wished to register claims in the periodical as well as the articles included in the periodical, and/or to address issues involving registration of musical compositions for which nonexclusive rights had been granted to performing rights organizations. The Office has found no evidence to support these theories, but welcomes comments from the public that may shed light on the reasons for the inclusion of the footnote.

[4] 17 U.S.C. 101 (definition of ''copyright owner'': ''Copyright owner, with respect to any one of the

foundation in the statutory language for allowing a person or organization with less than a copyright ownership interest in an exclusive right to be considered a owner of copyright or a valid claimant of a claim to copyright. The bald right to register a work is not one of the section 106 exclusive rights. Only the owner of an exclusive right (or subdivision thereof) is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by title 17. *See,* 17 U.S.C. 201(d)(2).[5]

The above discussion poses more than a theoretical problem. While the Office recognizes that transfers may be limited in time and duration, see, *Bean* v. *Littell,* 669 F. Supp.2d 1031 (D. Ariz. 2008), recent court decisions have questioned what it means to claim legal title to copyright when in fact the ''claimant'' does not in fact own any section 106 rights or may technically own those rights, but does not have the ability to exercise any of the exclusive rights.[6] At least one court has held that the standing to sue for copyright infringement is absent when underlying agreements distort or misrepresent such claimants' interests in and to the ownership of exclusive rights. ''If the plaintiff is not a proper owner of the copyright rights, then it cannot invoke copyright protection stemming from the exclusive rights belonging to the owner, including infringement of the copyright.'' [7] While the Copyright Office does not believe that all transfers relying on the footnote necessarily misrepresent who is a valid copyright claimant, there exists the real possibility that the footnote fosters questionable claims of ownership due to its ambiguous language.

The elimination of the footnote would leave numerous options for registering works to authors and copyright owners, including the owners of a single exclusive right. As noted above, the owner of an exclusive right may always register a claim in the work by listing the author as the claimant. Any authorized agent of the author, the owner of all rights, or the owner of an exclusive may similarly file an application for registration on behalf of a valid claimant by filling out the application and certifying their relationship to the claimant.

In the case of collective works, the author of articles contributed to a number of periodicals may avail himself or herself to the group registration option for contributions to periodicals established pursuant to section 408(d) of the Copyright Act. *See,* 37 CFR 202.3(b)(8). A number of other group registration options exist for other types of works, such as for unpublished collections and for published photographs. *See,* 37 CFR 202.3(a)(4) and 202.3(b)(10).

In light of the concerns raised about the footnote and the alternative registration options available to claimants, the owners of one or more exclusive rights, and agents of such persons or entities, the Office believes that elimination of the footnote is warranted. The Office believes that the elimination of the footnote would have no discernable adverse effect on the ability to register works, would foster a more accurate and meaningful record of authorship and ownership, and would reduce the possibility of fraudulent or misleading claims. Removal of the footnote would also reduce the occurrence of litigation over the validity of misleading transfers by creating a bright line rule, consistent with the rationale expressed for the original Interim Regulation, for determining who may assert a claim of copyright. The Copyright Office seeks public comment on this intended amendment to the definition of a ''claimant.''

**List of Subjects in 37 CFR Part 202**

Copyright, Registration.

**Proposed Regulation**

In consideration of the foregoing, the Copyright Office proposes to amend part 202.3(a)(3) as follows:

## PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

**Authority:** 17 U.S.C. 408, 409, 702.

2. Amend sec. 202.3 paragraph (a)(3)(ii) as follows:

a. In paragraph (ii), remove footnote 1.

Dated: May 10, 2012.

**Maria A. Pallante,**

*Register of Copyrights.*

[FR Doc. 2012–11879 Filed 5–16–12; 8:45 am]

BILLING CODE 1410–30–P

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## LIBRARY OF CONGRESS

## Copyright Royalty Board

## 37 CFR Part 385

**[Docket No. 2011–3 CRB Phonorecords II]**

## Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Proposed rule.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the section 115 statutory license for the use of musical works in physical phonorecord deliveries, permanent digital downloads, ringtones, interactive streaming, limited downloads, limited offerings, mixed service bundles, music bundles, paid locker services and purchased content locker services.

**DATES:** Comments and objections, if any, are due no later than June 18, 2012.

**ADDRESSES:** Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means for transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought between 8:30 a.m. and 5 p.m. to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier,

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exclusive rights comprised in a copyright, refers to the owner of that particular right''). However, the concept of a copyright ''owner'' need not be congruent with the concept of a copyright registration ''claimant.'' As explained *supra,* if an owner of an exclusive right could register a work, there would either be multiple registrations for particular works, thus violating the general rule of only one registration per work, or one registration by the first owner to register, thus leading to a misleading and inaccurate public record.

[5] That provision may also be interpreted to distinguish an owner of an exclusive right from a ''copyright owner'' in the broader sense of the owner of all rights.

[6] *Righthaven LLC* v. *Mostofi,* 2011 U.S. Dist. LEXIS 75810 (D. Nev. July 13, 2011). *See also, Silvers* v. *Sony Pictures Entertainment, Inc.,* 402 F.3d 881 (9th Cir. 2005), cert. den'd 546 U.S. 827 (2005) (The right to sue for an accrued claim for infringement is not an exclusive right under 17 U.S.C.S. 106. Moreover, the bare assignment of an accrued cause of action is impermissible under 17 U.S.C.S. 501(b).)

[7] *Righthaven LLC* v. *Mostofi,* 2011 U.S. Dist. LEXIS 75810 (D. Nev. July 13, 2011), *quoting, Silvers* v. *Sony Pictures Entertainment, Inc.,* 402 F.3d 881 (9th Cir. 2005), *quoting,* 4 Business and Commercial Litigation in Federal Courts, at 1062 § 65.3(a)(4) (Robert Haig ed.). *Accord, Righthaven LLC* v. *Inform Techs.,* Inc., 2011 U.S. Dist. LEXIS 119379 (D. Nev. Oct. 14, 2011).

comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 115 of the Copyright Act, title 17 of the United States Code, also known as the mechanical compulsory license, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 (''DPRSRA''), Public Law 104–39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. 17 U.S.C. 115(c)(3). Consequently, the license now covers digital transmissions of phonorecords in addition to the physical copies such as compact discs, vinyl and cassette tapes. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (''Judges'') to conduct proceedings every five years to determine the rates and terms for the section 115 license.[1] 17 U.S.C. 801(b)(1), 804(b)(4). In accordance with section 804(b)(4), the Judges commenced a proceeding to set rates and terms for the section 115 license on January 9, 2006, 71 FR 1454, and their final determination of said rates and terms was published in the **Federal Register** on January 26, 2009. 74 FR 4510. Therefore, the next proceeding to determine rates and terms for the section 115 license was to be commenced in January 2011. 17 U.S.C. 804(b)(4).

Accordingly, the Judges published a notice commencing the current proceeding and requesting interested parties to submit their petitions to participate. 76 FR 590 (January 5, 2011). Petitions to Participate were received from: Microsoft Corporation (''Microsoft''); Omnifone Group Limited (''Omnifone''); CTIA—The Wireless Association (''CTIA''); Cricket Communications, Inc. (''Cricket''); PacketVideo, Inc. (''PacketVideo''); Slacker, Inc. (''Slacker''); Google, Inc. (''Google''); Amazon Digital Services, Inc. (''Amazon''); Beyond Oblivion, Inc. (''Beyond Oblivion''); AT&T Mobility LLC (''AT&T Mobility''); Rdio, Inc. (''Rdio''); Apple, Inc. (''Apple''); the Recording Industry Association of America, Inc. (''RIAA''); Rhapsody International, Inc. (''Rhapsody''); RealNetworks, Inc. (''RealNetworks''); Thumbplay, Inc. (''Thumbplay'');[2] Pandora Media, Inc. (''Pandora''); The American Association of Independent Music (''A2IM''); Music Reports, Inc. (''Music Reports''); the National Music Publishers' Association, Inc., Songwriters Guild of America, Nashville Songwriters Association International and Church Music Publishers Association, jointly (collectively, ''Copyright Owners''); EMI Music Publishing (''EMI''); the Songwriters Guild of America (''SGA''); Napster, LLC (''Napster''); the Digital Media Association (''DiMA''); and Broadcast Music, Inc. (''BMI'').[3] The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), and directed the participants to submit their written direct statements no later than April 30, 2012. On April 11, 2012, the Judges received a Motion to Adopt Settlement stating that ''[a]ll participants in the Proceeding are parties to the Settlement or have reviewed the Settlement and do not object to its being adopted as the basis for setting statutory rates and terms.''[4] Motion to Adopt Settlement at 2 (April 11, 2012).

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides that in such event:

> (i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and
>
> (ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of musical works and those using such musical works in the activities set forth in the proposed regulations.

In publishing the parties' proposed rates and terms, the Judges are removing two provisions and seeking comment on two others. The parties have included language in proposed §§ 385.10(c) and 385.20(c) that states that ''[n]either this subpart nor the act of obtaining a license under 17 U.S.C. 115 * * * and shall not constitute evidence, as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.'' Our task, as set forth in section 115 and chapter 8 of the Copyright Act, is to adopt rates and terms for the compulsory license for the making and distributing of physical and digital phonorecords. It is not our task to offer evaluations, limitations or characterizations of the rates and terms. Therefore, the Judges decline to include the language ''and shall not constitute evidence'' in our regulations. *See Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding, Notice of proposed rulemaking,* Docket No. 2006–3 CRB DPRA, 73 FR 57033, 57034 (October 1, 2008); *Noncommercial Educational Broadcasting Statutory License, Notice of proposed rulemaking,* Docket No. 2006–2 CRB NCBRA, 72 FR 19138, 19139 (April 17, 2007).

The parties have proposed two provisions, § 385.12(e) and § 385.22(d), relating to statements of account for the

[1] The Copyright Royalty Judges, which were established by the Copyright Royalty and Distribution Reform Act of 2004, are the third entity to set the rates and terms for the section 115 license. Until its abolishment in 1993, the Copyright Royalty Tribunal (''CRT'') had the authority to adjust the statutory rates for the section 115 license. After 1993, Congress granted authority to Copyright Arbitration Royalty Panels (''CARP''), under the supervision of the Librarian of Congress, to set rates and, unlike the CRT, to also adopt terms for the mechanical license. *See* Copyright Royalty Tribunal Reform Act of 1993, Public Law 103–198, 107 Stat. 2304.

[2] Thumbplay withdrew from the proceeding on April 5, 2012.

[3] BMI's filing was styled as ''Comments in Response to Request for Petitions to Participate,'' and BMI withdrew its comments on December 1, 2011.

[4] Music Reports' signature was inadvertently omitted from the motion; its signature was provided on April 18, 2012. Since neither Beyond Oblivion nor Napster were signatories to the motion, the Judges presume that they each reviewed the settlement and do not object to its adoption, per the signatories' representation.

section 115 license. Both of these sections, which are virtually identical, appear to propose in their second sentences requirements beyond those set forth by the Register of Copyrights in 37 CFR 201.19. The authority to prescribe regulations relating to statements of account is ''the exclusive domain of the Register,'' *see Division of Authority Between the Copyright Royalty Judges and the Register of Copyrights under the Section 115 Statutory License, Final order,* Docket No. RF 2008–1, 73 FR 48396, 48398 (August 19, 2008), and the Judges ''cannot alter requirements issued by the Register regarding statements of account.'' *Review of Copyright Royalty Judges Determination, Notice; correction,* Docket No. 2009–1, 74 FR 4537, 4543 (January 26, 2009).[5] Consequently, we particularly invite comments of the parties, and the Register of Copyrights, regarding these provisions.

As noted above, the public may comment and object to any or all of the proposed regulations contained in this notice. Such comments and objections must be submitted no later than June 18, 2012.

**List of Subjects in 37 CFR Part 385**

Copyright, Phonorecords, Recordings.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend Part 385 of Chapter III of title 37 of the Code of Federal Regulations to read as follows:

## PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

1. The authority citation for part 385 continues to read as follows:

**Authority:** 17 U.S.C. 115, 801(b)(1), 804(b)(4).

### § 385.4 [Amended]

2. Section 385.4 is amended by removing ''(‘‘ and adding ''§ '' in its place.

3. Revise heading of Subpart B to read as follows:

## Subpart B—Interactive Streaming and Limited Downloads

4. Section 385.10 is amended as follows:

a. By revising paragraph (b); and

b. By adding a new paragraph (c).

The revisions and additions read as follows:

### § 385.10 General.

* * * * *

(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes interactive streams or limited downloads of musical works through subscription or nonsubscription digital music services shall comply with the requirements of that section, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.

(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

5. Section 385.11 is amended as follows:

a. By adding in alphabetical order definitions for ''*Affiliate*'', ''*Applicable consideration*'', and ''*GAAP''*;

b. In paragraph (2) of ''*Limited download*'', by adding ''provider'' after ''service'';

c. In paragraph for definition of ''*Offering*'', by removing ''service's'' and adding ''service provider's'' in its place, and by adding ''provider'' after ''service'';

d. By removing paragraph for definition of ''*Publication date*'';

e. In paragraph for definition of ''*Relevant page*'', by removing ''users for limited downloads or interactive streams'' and adding ''users for licensed activity'' in its place;

f. In paragraph for definition of ''*Service*'', by adding ''*provider*'' after ''*Service*'' in paragraph heading;

g. In paragraph (1) of ''*Service revenue*'', by removing ''U.S. Generally Accepted Accounting Principles'' and adding ''GAAP'' in its place;

h. In paragraphs (1)(i)–(ii) of ''*Service revenue*'', by adding ''provider'' after ''service'';

i. In paragraph (1)(iii) of ''*Service revenue*'', by adding ''provider'' after ''by the service'';

j. In paragraph (2)(i) of ''*Service revenue''*, by removing ''service'' and adding ''service provider'' in its place each place it appears; and

k. In paragraph (5) of ''*Service revenue''*, by removing ''In connection with such a bundle, if a record company providing sound recording rights to the service'' and by removing paragraphs (5)(i) and (ii).

The additions read as follows:

### § 385.11 Definitions.

*Affiliate* means an entity controlling, controlled by, or under common control with another entity, except that an affiliate of a record company shall not include a copyright owner of musical works to the extent it is engaging in business as to musical works.

*Applicable consideration* means anything of value given for the identified rights to undertake the licensed activity, including, without limitation, ownership equity, monetary advances, barter or any other monetary and/or nonmonetary consideration, whether such consideration is conveyed via a single agreement, multiple agreements and/or agreements that do not themselves authorize the licensed activity but nevertheless provide consideration for the identified rights to undertake the licensed activity, and including any such value given to an affiliate of a record company for such rights to undertake the licensed activity. For the avoidance of doubt, value given to a copyright owner of musical works that is controlling, controlled by, or under common control with a record company for rights to undertake the licensed activity shall not be considered value given to the record company. Notwithstanding the foregoing, applicable consideration shall not include in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings embodying musical works or the paid use of music services through which sound recordings embodying musical works are available where such in-kind promotional consideration is given in connection with a use that qualifies for licensing under 17 U.S.C. 115.

*GAAP* means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the

[5] In the prior section 115 proceeding, the Register found the Judges' adoption of language that excluded inclusion of certain activities from the statements of account to be erroneous. *See* 74 FR at 4543. Consequently, the Judges exercised their continuing jurisdiction and deleted the offending language. *See Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding, Final rule,* Docket No. 2006–3 CRB DPRA, 74 FR 6832 (February 11, 2009).

International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this subpart.

* * * * *

6. Section 385.12 is amended as follows:

a. In paragraph (b), by removing ''offering.'' and adding ''offering taking into consideration service revenue and expenses associated with such offering.'' in its place;

b. In paragraph (b)(1), by removing ''Service.'' and adding ''Offering.'' in its place and by adding ''provider'' after ''service'';

c. In paragraph (b)(1)(i), by removing ''revenue as'' and adding ''revenue associated with the relevant offering as'' in its place;

d. In paragraph (b)(2), by removing ''service, subtract'' and adding ''service provider, subtract'' in its place, by removing ''by the service'', by removing ''While'' and adding ''Although'' in its place, by removing ''under its agreements with performing rights societies as defined in 17 U.S.C. 101'', and by removing ''In the latter case,'' and adding ''In the case where the service is also engaging in the public performance of musical works that does not constitute licensed activity,'' in its place;

e. In paragraph (b)(3), by adding ''provider'' after ''service'';

f. In paragraph (b)(4), by removing ''used by the service'' and adding ''used by the service provider'' in its place each place it appears, by removing ''on or after October 1, 2010'', by removing ''if the service is'' and adding ''if the service provider is'';

g. By revising paragraph (c);

h. In paragraph (d), by removing ''For licensed activity on or after October 1, 2010,''; and

i. By adding a new paragraph (f).

The revisions and additions read as follows:

**§ 385.12 Calculation of royalty payments in general.**

* * * * *

(c) *Percentage of service revenue.* The percentage of service revenue applicable under paragraph (b) of this section is 10.5%.

* * * * *

(f) *Confidentiality.* A licensee's statement of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall be maintained in confidence by any copyright owner, authorized representative or agent that receives it, and shall solely be used by the copyright owner, authorized representative or agent for purposes of reviewing the amounts paid by the licensee and verifying the accuracy of any such payments, and only those employees of the copyright owner, authorized representative or agent who need to have access to such information for such purposes will be given access to such information; provided that in no event shall access be granted to any individual who, on behalf of a record company, is directly involved in negotiating or approving royalty rates in transactions authorizing third party services to undertake licensed activity with respect to sound recordings. A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall not be used for any other purpose, and shall not be disclosed to or used by or for any record company affiliate or any third party, including any third-party record company.

7. Section 385.13 is amended as follows:

a. In paragraphs (a)(1)–(a)(5), by removing ''§ 385.12(b)(1)'' and adding ''§ 385.12(b)(1)(ii)'' in its place each place it appears, and by removing ''§ 385.12(b)(3)'' and adding ''§ 385.12(b)(3)(ii)'' in its place each place it appears;

b. In paragraph (a)(4), by adding ''providing licensed activity that is'' before ''made available to end users'' and by adding ''(including products or services subject to other subparts)'' before ''as part of a single transaction'';

c. By revising paragraphs (b) and (c);

d. By redesignating paragraph (d) as paragraph (e);

e. By adding a new paragraph (d); and

f. In newly redesignated paragraph (e), by removing ''the service shall for the relevant offering calculate its'' and adding ''the'' in its place, and by adding ''shall be calculated,'' before ''taking into account''.

The revisions and additions read as follows:

**§ 385.13 Minimum royalty rates and subscriber-based royalty floors for specific types of services.**

* * * * *

(b) *Computation of subminimum I.* For purposes of paragraphs (a)(2), (3), and (4) of this section, subminimum I for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—

(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 17.36% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 21% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(c) *Computation of subminimum II.* For purposes of paragraphs (a)(1) and (5) of this section, subminimum II for an accounting period means the aggregate of the following with respect to all sound recordings of musical works used in the relevant offering of the service provider during the accounting period—

(1) In cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams and limited downloads of a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, 18% of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to make interactive streams or limited downloads of a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, 22% of the total amount expensed by the service

provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(d) *Payments by third parties.* If a record company providing sound recording rights to the service provider for a licensed activity—

(1) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed activity and its affiliates, and

(2) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,

(3) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraphs (b)(1), (b)(2), (c)(1), or (c)(2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.

* * * * *

8. Section 385.14 is amended as follows:

a. In paragraphs (a)(1)(iii)(A)–(C), by removing ''service'' and adding ''service provider'' in its place each place it appears;

b. In paragraph (a)(1)(iii)(A), by removing ''commencing on or after October 1, 2010, except'' and adding ''other than'' in its place;

c. In paragraph (a)(3), by removing ''the service shall provide'' and adding ''the service provider shall provide'' in its place, by removing ''the service shall have'' and adding ''the service provider shall have'' in its place, and by removing ''the service (but'' and adding ''the service provider (but'' in its place;

d. By revising paragraph (b)(1);

e. In paragraph (b)(4), by removing ''the service, and not'' and adding ''the service provider, and not'' in its place; and

f. By revising paragraph (d).

The revisions read as follows:

**§ 385.14 Promotional royalty rate.**

* * * * *

(b) * * *

(1) No applicable consideration for making or authorizing the relevant interactive streams or limited downloads is received by the record company, any of its affiliates, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration given to a record company (or affiliate thereof) that is used to promote the sale or paid use of sound recordings or the paid use of music services through which sound recordings are available;

* * * * *

(d) *Interactive streaming of clips.* In addition to those in paragraph (a) of this section, the provisions of this paragraph (d) apply to interactive streaming conducted or authorized by record companies under the promotional royalty rate of segments of sound recordings of musical works with a playing time that does not exceed 90 seconds. Such interactive streams may be made or authorized by a record company under the promotional royalty rate without any of the temporal limitations set forth in paragraphs (b) and (c) of this section (but subject to the other conditions of paragraphs (b) and (c) of this section, as applicable). For clarity, this paragraph (d) is strictly limited to the uses described herein and shall not be construed as permitting the creation or use of an excerpt of a musical work in violation of 17 U.S.C. 106(2) or 115(a)(2) or any other right of a musical work owner.

9. Add Subpart C to read as follows:

**Subpart C—Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services**

Sec.

385.20 General.
385.21 Definitions.
385.22 Calculation of royalty payments in general.
385.23 Royalty rates and subscriber-based royalty floors for specific types of services.
385.24 Free trial periods.
385.25 Reproduction and distribution rights covered.
325.26 Effect of rates.

## Subpart C—Limited Offerings, Mixed Service Bundles, Music Bundles, Paid Locker Services and Purchased Content Locker Services

**§ 385.20 General.**

(a) *Scope.* This subpart establishes rates and terms of royalty payments for certain reproductions or distributions of musical works through limited offerings, mixed service bundles, music bundles, paid locker services and purchased content locker services provided in accordance with the provisions of 17 U.S.C. 115. For the avoidance of doubt, to the extent that product configurations for which rates are specified in subpart A of this part are included within licensed subpart C of this part activity, the rates specified in subpart A of this part shall not apply, except that in the case of a music bundle the compulsory licensee may elect to pay royalties for the music bundle pursuant to subpart C of this part or for the components of the bundle pursuant to subpart A of this part.

(b) *Legal compliance.* A licensee that, pursuant to 17 U.S.C. 115, makes or authorizes reproduction or distribution of musical works in limited offerings, mixed service bundles, music bundles, paid locker services or purchased content locker services shall comply with the requirements of that sections, the rates and terms of this subpart, and any other applicable regulations, with respect to such musical works and uses licensed pursuant to 17 U.S.C. 115.

(c) *Interpretation.* This subpart is intended only to set rates and terms for situations in which the exclusive rights of a copyright owner are implicated and a compulsory license pursuant to 17 U.S.C. 115 is obtained. Neither this subpart nor the act of obtaining a license under 17 U.S.C. 115 is intended to express or imply any conclusion as to the circumstances in which any of the exclusive rights of a copyright owner are implicated or a license, including a compulsory license pursuant to 17 U.S.C. 115, must be obtained.

**§ 385.21 Definitions.**

For purposes of this subpart, the following definitions shall apply:

*Affiliate* shall have the meaning given in § 385.11.

*Applicable consideration* shall have the meaning given in § 385.11, except that for purposes of this subpart references in the definition of ''Applicable consideration'' in § 385.11 to licensed activity shall mean licensed subpart C of this part activity.

*Free trial royalty rate* means the statutory royalty rate of zero in the case of certain free trial periods, as provided in § 385.24.

*GAAP* shall have the meaning given in § 385.11.

*Interactive stream* shall have the meaning given in § 385.11.

*Licensee* shall have the meaning given in § 385.11.

*Licensed subpart C of this part activity* means—

(1) In the case of a limited offering, the applicable interactive streams or limited downloads;

(2) In the case of a locker service, the applicable interactive streams, permanent digital downloads, restricted downloads or ringtones;

(3) In the case of a music bundle, the applicable reproduction or distribution of a physical phonorecord, permanent digital download or ringtone; and

(4) In the case of a mixed service bundle, the applicable—

(i) Permanent digital downloads;

(ii) Ringtones;

(iii) To the extent a limited offering is included in a mixed service bundle, interactive streams or limited downloads; or

(iv) To the extent a locker service is included in a mixed service bundle, interactive streams, permanent digital downloads, restricted downloads or ringtones.

*Limited download* shall have the meaning given in § 385.11.

*Limited offering* means a subscription service providing interactive streams or limited downloads where—

(1) An end user is not provided the opportunity to listen to a particular sound recording chosen by the end user at a time chosen by the end user (i.e., the service does not provide interactive streams of individual recordings that are on-demand, and any limited downloads are rendered only as part of programs rather than as individual recordings that are on-demand); or

(2) The particular sound recordings available to the end user over a period of time are substantially limited relative to services in the marketplace providing access to a comprehensive catalog of recordings (e.g., a service limited to a particular genre, or permitting interactive streaming only from a monthly playlist consisting of a limited set of recordings).

*Locker service* means a service providing access to sound recordings of musical works in the form of interactive streams, permanent digital downloads, restricted downloads or ringtones, where the service has reasonably determined that phonorecords of the applicable sound recordings have been purchased by the end user or are otherwise in the possession of the end use prior to the end user's first request to access such sound recordings by means of the service. The term service locker does not extend to any part of a service otherwise meeting this definition as to which a license is not obtained for the applicable reproductions and distributions of musical works.

*Mixed service bundle* means an offering of one or more of permanent digital downloads, ringtones, locker services or limited offerings, together with one or more of non-music services (e.g., Internet access service, mobile phone service) or non-music products (e.g., a device such as a phone) of more than token value, that is provided to users as part of one transaction without pricing for the music services or music products separate from the whole offering.

*Music bundle* means an offering of two or more of physical phonorecords, permanent digital downloads or ringtones provided to users as part of one transaction (e.g., download plus ringtone, CD plus downloads). A music bundle must contain at least two different product configurations and cannot be combined with any other offering containing licensed activity under subpart B of this part or subpart C of this part.

(1) In the case of music bundles containing one or more physical phonorecords, the physical phonorecord component of the music bundle must be sold under a single catalog number, and the musical works embodied in the digital phonorecord delivery configurations in the music bundle must be the same as, or a subset of, the musical works embodied in the physical phonorecords; provided that when the music bundle contains a set of digital phonorecord deliveries sold by the same record company under substantially the same title as the physical phonorecord (e.g., a corresponding digital album), up to 5 sound recordings of musical works that are included in the stand-alone version of such set of digital phonorecord deliveries but are not included on the physical phonorecord may be included among the digital phonorecord deliveries in the music bundle. In addition, the seller must permanently part with possession of the physical phonorecord or phonorecords sold as part of the music bundle.

(2) In the case of music bundles composed solely of digital phonorecords deliveries, the number of digital phonorecord deliveries in either configuration cannot exceed 20, and the musical works embodied in each configuration in the music bundle must be the same as, or a subset of, the musical works embodied in the configuration containing the most musical works.

*Paid locker service* means a locker service that is a subscription service.

*Permanent digital download* shall have the meaning given in § 385.2.

*Purchased content locker service* means a locker service made available to end-user purchasers of permanent digital downloads, ringtones or physical phonorecords at no incremental charge above the otherwise applicable purchase price of the permanent digital downloads, ringtones or physical phonorecords, with respect to the sound recordings embodied in permanent digital downloads or ringtones or physical phonorecords purchased from a qualifying seller as described in paragraph (1) of the definition of ''Purchased content locker service,'' whereby the locker service enables the purchaser to engage in one or both of the qualifying activities identified in paragraph (2) of the definition of ''Purchased content locker service.'' In addition, in the case of a locker service made available to end-user purchasers of physical phonorecords, the seller must permanently part with possession of the physical phonorecords.

(1) A qualifying seller for purposes of this definition of ''purchased content locker service'' is the same entity operating such locker service, one of its affiliates or predecessors, or—

(i) In the case of permanent digital downloads or ringtones, a seller having another legitimate connection to the locker service provider set forth in one or more written agreements (including that the locker service and permanent digital downloads or ringtones are offered through the same third party); or

(ii) In the case of physical phonorecords, a seller having an agreement with—

(A) The locker service provider whereby such parties establish an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service; or

(B) A service provider that also has an agreement with the entity offering the locker service, where pursuant to those agreements the service provider has established an integrated offer that creates a consumer experience commensurate with having the same service both sell the physical phonorecord and offer the locker service.

(2) Qualifying activity for purposes of this definition of ''purchased content

locker service'' is enabling the purchaser to—

(i) Receive one or more additional phonorecords of such purchased sound recordings of musical works in the form of permanent digital downloads or ringtones at the time of purchase, or

(ii) Subsequently access such purchased sound recordings of musical works in the form of interactive streams, additional permanent digital downloads, restricted downloads or ringtones.

*Record company* shall have the meaning given in § 385.11.

*Restricted download* means a digital phonorecord delivery distributed in the form of a download that may not be retained and played on a permanent basis. The term restricted download includes a limited download.

*Ringtone* shall have the meaning given in § 385.2.

*Service provider* shall have the meaning given in § 385.11, except that for purposes of this subpart references in the definition of ''Service provider'' in § 385.11 to licensed activity and service revenue shall mean licensed subpart C of this part activity and subpart C of this part service revenue, respectively.

*Subpart C of this part offering* means a service provider's offering of licensed subpart C of this part activity that is subject to a particular rate set forth in § 385.23(a) (e.g., a particular subscription plan available through the service provider).

*Subpart C of this part relevant page* means a page (including a Web page, screen or display) from which licensed subpart C of this part activity offered by a service provider is directly available to end users, but only where the offering of licensed subpart C of this part activity and content that directly relates to the offering of licensed subpart C of this part activity (e.g., an image of the artist or artwork closely associated with such offering, artist or album information, reviews of such offering, credits and music player controls) comprises 75% or more of the space on that page, excluding any space occupied by advertising. A licensed subpart C of this part activity is directly available to end users from a page if sound recordings of musical works can be accessed by end users for licensed subpart C of this part activity from such page (in most cases this will be the page where the transmission takes place).

*Subpart C of this part service revenue.* (1) Subject to paragraphs (2) through (6) of the definition of ''Subpart C of this part service revenue,'' and subject to GAAP, subpart C of this part service revenue shall mean the following:

(i) All revenue recognized by the service provider from end users from the provision of licensed subpart C of this part activity;

(ii) All revenue recognized by the service provider by way of sponsorship and commissions as a result of the inclusion of third-party ''in-stream'' or ''in-download'' advertising as part of licensed subpart C of this part activity (i.e., advertising placed immediately at the start, end or during the actual delivery, by way of transmissions of a musical work that constitute licensed subpart C of this part activity); and

(iii) All revenue recognized by the service provider, including by way of sponsorship and commissions, as a result of the placement of third-party advertising on a subpart C of this part relevant page of the service or on any page that directly follows such subpart C of this part relevant page leading up to and including the transmission of a musical work that constitutes licensed subpart C of this part activity; provided that, in the case where more than one service is actually available to end users from a subpart C of this part relevant page, any advertising revenue shall be allocated between such services on the basis of the relative amounts of the page they occupy.

(2) In each of the cases identified in paragraph (1) of the definition of ''Subpart C of this part service revenue,'' such revenue shall, for the avoidance of doubt,

(i) Include any such revenue recognized by the service provider, or if not recognized by the service provider, by any associate, affiliate, agent or representative of such service provider in lieu of its being recognized by the service provider;

(ii) Include the value of any barter or other nonmonetary consideration;

(iii) Not be reduced by credit card commissions or similar payment process charges; and

(iv) Except as expressly set forth in this subpart, not be subject to any other deduction or set-off other than refunds to end users for licensed subpart C of this part activity that they were unable to use due to technical faults in the licensed subpart C of this part activity or other bona fide refunds or credits issued to end users in the ordinary course of business.

(3) In each of the cases identified in paragraph (1) of the definition of ''Subpart C of this part service revenue,'' such revenue shall, for the avoidance of doubt, exclude revenue derived solely in connection with services and activities other than licensed subpart C of this part activity, provided that advertising or sponsorship revenue shall be treated as provided in paragraphs (2) and (4) of the definition of ''Subpart C of this part service revenue.'' By way of example, the following kinds of revenue shall be excluded:

(i) Revenue derived from non-music voice, content and text services;

(ii) Revenue derived from other non-music products and services (including search services, sponsored searches and click-through commissions);

(iii) Revenue generated from the sale of actual locker service storage space to the extent that such storage space is sold at a separate retail price;

(iv) In the case of a locker service, revenue derived from the sale of permanent digital downloads or ringtones; and

(v) Revenue derived from other music or music-related products and services that are not or do not include licensed subpart C of this part activity.

(4) For purposes of paragraph (1) of the definition of ''Subpart C of this part service revenue,'' advertising or sponsorship revenue shall be reduced by the actual cost of obtaining such revenue, not to exceed 15%.

(5) In the case of a mixed service bundle, the revenue deemed to be recognized from end users for the service for the purpose of the definition in paragraph (1) of the definition of ''Subpart C of this part service revenue'' shall be the greater of—

(i) The revenue recognized from end users for the mixed service bundle less the standalone published price for end users for each of the non-music product or non-music service components of the bundle; provided that, if there is no such standalone published price for a non-music component of the bundle, then the average standalone published price for end users for the most closely comparable non-music product or non-music service in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and

(ii) Either—

(A) In the case of a mixed service bundle that either has 750,000 subscribers or other registered users, or is reasonably expected to have 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle, 40% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the

most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and further provided that in any case in which royalties were paid based on this paragraph due to a reasonable expectation of reaching 750,000 subscribers or other registered users within 1 year after commencement of the mixed service bundle and that does not actually happen, applicable payments shall, in the accounting period next following the end of such 1-year period, retroactively be adjusted as if paragraph (5)(ii)(B) of the definition of ''Subpart C of this part service revenue'' applied; or

(B) Otherwise, 50% of the standalone published price of the licensed music component of the bundle (i.e., the permanent digital downloads, ringtones, locker service or limited offering); provided that, if there is no such standalone published price for the licensed music component of the bundle, then the average standalone published price for end users for the most closely comparable licensed music component in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used.

(6) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee—

(i) Service revenue shall be 150% of the record company's wholesale revenue from the music bundle; and

(ii) The times at which distribution and revenue recognition are deemed to occur shall be in accordance with § 201.19 of this title.

*Subscription service* means a digital music service for which end users are required to pay a fee to access the service for defined subscription periods of 3 years or less (in contrast to, for example, a service where the basic charge to users is a payment per download or per play), whether such payment is made for access to the service on a standalone basis or as part of a bundle with one or more other products or services, and including any use of such a service on a trial basis without charge as described in § 385.24.

**§ 385.22 Calculation of royalty payments in general.**

(a) *Applicable royalty.* Licensees that make or authorize licensed subpart C of this part activity pursuant to 17 U.S.C. 115 shall pay royalties therefor that are calculated as provided in this section, subject to the royalty rates and subscriber-based royalty floors for specific types of services provided in § 385.23, except as provided for certain free trial periods in § 385.24.

(b) *Rate calculation methodology.* Royalty payments for licensed subpart C of this part activity shall be calculated as provided in paragraph (b) of this section. If a service provides different subpart C of this part offerings, royalties must be separately calculated with respect to each such subpart C of this part offering taking into consideration service revenue and expenses associated with such offering. Uses subject to the free trial royalty rate shall be excluded from the calculation of royalties due, as further described in this section and the following § 385.23.

(1) *Step 1:* Calculate the All-In Royalty for the Subpart C of this Part Offering. For each accounting period, the all-in royalty for each subpart C of this part offering of the service provider is the greater of:

(i) The applicable percentage of subpart C of this part service revenue associated with the relevant offering as set forth in § 385.23(a) (excluding any subpart C of this part service revenue derived solely from licensed subpart C of this part activity uses subject to the free trial royalty rate), and

(ii) The minimum specified in § 385.23(a) for the subpart C of this part offering involved.

(2) *Step 2:* Subtract applicable performance royalties to determine the payable royalty pool, which is the amount payable for the reproduction and distribution of all musical works used by the service provider by virtue of its licensed subpart C of this part activity for a particular subpart C of this part offering during the accounting period. From the amount determined in step 1 in paragraph (b)(1) of this section, for each subpart C of this part offering of the service provider, subtract the total amount of royalties for public performance of musical works that has been or will be expensed pursuant to public performance licenses in connection with uses of musical works through such subpart C of this part offering during the accounting period that constitute licensed subpart C of this part activity (other than licensed subpart C of this part activity subject to the free trial royalty rate), or in connection with previewing of such subpart C of this part offering during the accounting period. Although this amount may be the total of the payments with respect to the service for that subpart C of this part offering for the accounting period, it will be less than the total of such public performance payments if the service is also engaging in public performance of musical works that does not constitute licensed subpart C of this part activity, or previewing of such licensed subpart C of this part activity. In the case where the service is also engaging in the public performance of musical works that does not constitute licensed subpart C of this part activity, the amount to be subtracted for public performance payments shall be the amount of such payments allocable to licensed subpart C of this part activity uses (other than free trial royalty rate uses), and previewing of such uses, in connection with the relevant subpart C of this part offering, as determined in relation to all uses of musical works for which the public performance payments are made for the accounting period. Such allocation shall be made on the basis of plays of musical works or, where per-play information is unavailable due to bona fide technical limitations as described in step 3 in paragraph (b)(3) of this section, using the same alternative methodology as provided in step 3 in paragraph (b)(3) of this section.

(3) *Step 3:* Calculate the Per-Work Royalty Allocation for Each Relevant Work. This is the amount payable for the reproduction and distribution of each musical work used by the service provider by virtue of its licensed subpart C of this part activity through a particular subpart C of this part offering during the accounting period. To determine this amount, the result determined in step 2 in paragraph (b)(2) of this section must be allocated to each musical work used through the subpart C of this part offering. The allocation shall be accomplished as follows:

(i) In the case of limited offerings (but not limited offerings that are part of mixed service bundles), by dividing the payable royalty pool determined in step 2 in paragraph (b)(2) of this section for such offering by the total number of plays of all musical works through such offering during the accounting period (other than free trial royalty rate plays) to yield a per-play allocation, and multiplying that result by the number of plays of each musical work (other than free trial royalty rate plays) through the offering during the accounting period. For purposes of determining the per-work royalty allocation in all calculations under this step 3 only (i.e., after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each play shall be counted as provided in paragraph (c) of this section. Notwithstanding the foregoing, if the service provider is not

capable of tracking play information due to bona fide limitations of the available technology for services of that nature or of devices usable with the service, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used by the service provider for making royalty payment allocations for the use of individual sound recordings.

(ii) In the case of mixed service bundles and locker services, by—

(A) Determining a constructive number of plays of all licensed musical works that is the sum of the total number of interactive streams of all licensed musical works made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through such offering during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads);

(B) Determining a constructive per-play allocation that is the payable royalty pool determined in step 2 of paragraph (b)(2) of this section for such offering divided by the constructive number of plays of all licensed musical works determined in paragraph (b)(3)(ii)(A) of this section;

(C) For each licensed musical work, determining a constructive number of plays of that musical work that is the sum of the total number of interactive streams of such licensed musical work made through such offering during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of such licensed musical work made through such offering during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of such licensed musical work made through such offering during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads); and

(D) For each licensed musical work, determining the per-work royalty allocation by multiplying the constructive per-play allocation determined in paragraph (b)(3)(ii)(B) of this section by the constructive number of plays of that musical work determined in paragraph (b)(3)(ii)(C) of this section.

(E) Notwithstanding the foregoing, if a service provider offers both a paid locker service and a purchased content locker service, and with respect to the purchased content locker service there is no subpart C of this part service revenue and the applicable subminimum is zero dollars, then the service provider shall be permitted to include within the calculation of constructive plays under paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(C) of this section for the paid locker service, the licensed subpart C of this part activity made through the purchased content locker service (i.e., the total number of interactive streams of all licensed musical works made through the purchased content locker service during the accounting period (other than free trial royalty rate interactive streams), plus the total number of plays of restricted downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider tracks plays (other than free trial royalty rate restricted downloads), plus 5 times the total number of downloads of all licensed musical works made through the purchased content locker service during the accounting period as to which the service provider does not track plays (other than free trial royalty rate downloads)); provided that the relevant licensed subpart C of this part activity made through the purchased content locker service is similarly included within the play calculation for the paid locker service for the corresponding sound recording rights.

(iii) In the case of music bundles, by—

(A) Allocating the payable royalty pool determined in step 2 of paragraph (b)(2) of this section to separate pools for each type of product configuration included in the music bundle (e.g., CD, permanent digital download, ringtone) in accordance with the ratios that the standalone published prices of the products that are included in the music bundle bear to each other; provided that, if there is no such standalone published price for such a product, then the average standalone published price for end users for the most closely comparable product in the U.S. shall be used or, if more than one such comparable exists, the average of such standalone prices for such comparables shall be used; and

(B) Allocating the product configuration pools determined in paragraph (b)(3)(iii)(A) of this section to individual musical works by dividing each such pool by the total number of sound recordings of musical works included in products of that configuration in the music bundle.

(c) *Overtime adjustment.* For purposes of the calculations in step 3 of paragraph (b)(3)(i) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of plays as follows:

(1) 5:01 to 6:00 minutes—Each play = 1.2 plays

(2) 6:01 to 7:00 minutes—Each play = 1.4 plays

(3) 7:01 to 8:00 minutes—Each play = 1.6 plays

(4) 8:01 to 9:00 minutes—Each play = 1.8 plays

(5) 9:01 to 10:00 minutes—Each play = 2.0 plays

(6) For playing times of greater than 10 minutes, continue to add .2 plays for each additional minute or fraction thereof.

(d) *Accounting.* The calculations required by paragraph (b) of this section shall be made in good faith and on the basis of the best knowledge, information and belief of the licensee at the time payment is due, and subject to the additional accounting and certification requirements of 17 U.S.C. 115(c)(5) and § 201.19 of this title. Without limitation, a licensee's statements of account shall set forth each step of its calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-work allocations (including information sufficient to demonstrate whether and how a minimum royalty payment pursuant to § 385.23 does or does not apply) and, for each subpart C of this part offering reported, also indicate the type of licensed subpart C of this part activity involved and the number of plays or downloads, as applicable, of each musical work (including an indication of any overtime adjustment applied, if applicable) that is the basis of the per-work royalty allocation being paid.

(e) *Confidentiality.* A licensee's statements of account, including any and all information provided a licensee with respect to the computation of a subminimum, shall be maintained in confidence of any copyright owner, authorized representative or agent that receives it, and shall solely be used by the copyright owner, authorized representative or agent for purposes of reviewing the amounts paid by the licensee and verifying the accuracy of any such payments, and only those employees of the copyright owner, authorized representative or agent who need to have access to such information

for such purposes will be given access to such information; provided that in no event shall access be granted to any individual who, on behalf of a record company, is directly involved in negotiating or approving royalty rates in transactions authorizing third party services to undertake licensed activity with respect to sound recordings. A licensee's statements of account, including any and all information provided by a licensee with respect to the computation of a subminimum, shall not be used for any other purpose, and shall not be disclosed to or used by or for any record company affiliate or any third party, including any third-party record company.

**§ 385.23 Royalty rates and subscriber-based royalty floors for specific types of services.**

(a) *In general.* The following royalty rates and subscriber-based royalty floors shall apply to the following types of licensed subpart C of this part activity:

(1) *Mixed service bundle.* In the case of a mixed service bundle, the percentage of subpart C of this part service revenue applicable in step 1 of § 385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%.

(2) *Music bundle.* In the case of a music bundle, the percentage of subpart C of this part service revenue applicable in step 1 of § 385.22(b)(1)(i) is 11.35%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) and (3) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%.

(3) *Limited offering.* In the case of a limited offering, the percentage of subpart C of this part service revenue applicable in step 1 of § 385.22(b)(1)(i) is 10.5%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the greater of—

(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.36%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 21%; and

(ii) The aggregate amount of 18 cents per subscriber per month.

(4) *Paid locker service.* In the case of a paid locker service, the percentage of subpart C of this part service revenue applicable in step 1 of § 385.22(b)(1)(i) is 12%. The minimum for use in step 1 of § 385.22(b)(1)(ii) is the greater of—

(i) The appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 17.11%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 20.65%; and

(ii) The aggregate amount of 17 cents per subscriber per month.

(5) *Purchased content locker service.* In the case of a purchased content locker service, the percentage of subpart C of this part service revenue applicable in step 1 of § 385.22(b)(1)(i) is 12%. For the avoidance of doubt, paragraph (1)(i) of the definition of ''Subpart C of this part service revenue'' shall not apply. The minimum for use in step 1 in § 385.22(b)(1)(ii) is the appropriate subminimum as described in paragraph (b) of this section for the accounting period, where the all-in percentage applicable to § 385.23(b)(1) is 18%, and the sound recording-only percentage applicable to § 385.23(b)(2) is 22%, except that for purposes of paragraph (b) of this section the applicable consideration expensed by the service for the relevant rights shall consist only of applicable consideration expensed by the service, if any, that is incremental to the applicable consideration expensed for the rights to make the relevant permanent digital downloads and ringtones.

(b) *Computation of subminima.* For purposes of paragraph (a) of this section, the subminimum for an accounting period is the aggregate of the following with respect to all sound recordings of musical works used in the relevant subpart C of this part offering of the service provider during the accounting period—

(1) Except as provided in paragraph (b)(3) of this section, in cases in which the record company is the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C of this part activity with respect to a sound recording through the third-party service together with the right to reproduce and distribute the musical work embodied therein, the appropriate all-in percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(2) In cases in which the record company is not the licensee under 17 U.S.C. 115 and the record company has granted the rights to engage in licensed subpart C of this part activity with respect to a sound recording through the third-party service without the right to reproduce and distribute the musical work embodied therein, the appropriate sound recording-only percentage from paragraph (a) of this section of the total amount expensed by the service provider or any of its affiliates in accordance with GAAP for such rights for the accounting period, which amount shall equal the applicable consideration for such rights at the time such applicable consideration is properly recognized as an expense under GAAP.

(3) In the case of a music bundle containing a physical phonorecord, where the music bundle is distributed by a record company for resale and the record company is the compulsory licensee, the appropriate all-in percentage from paragraph (a) of this section of the record company's total wholesale revenue from the music bundle in accordance with GAAP for the accounting period, which amount shall equal the applicable consideration for such music bundle at the time such applicable consideration is properly recognized as revenue under GAAP, subject to the provisions of § 201.19 of this title concerning the times at which distribution and revenue recognition are deemed to occur.

(4) If a record company providing sound recording rights to the service provider for a licensed subpart C of this part activity—

(i) Recognizes revenue (in accordance with GAAP, and including for the avoidance of doubt all applicable consideration with respect to such rights for the accounting period, regardless of the form or timing of payment) from a person or entity other than the service provider providing the licensed subpart C of this part activity and its affiliates, and

(ii) Such revenue is received, in the context of the transactions involved, as applicable consideration for such rights,

(iii) Then such revenue shall be added to the amounts expensed by the service provider solely for purposes of paragraph (b)(1) or (2) of this section, as applicable, if not already included in such expensed amounts. Where the service provider is the licensee, if the service provider provides the record company all information necessary for the record company to determine whether additional royalties are payable

by the service provider hereunder as a result of revenue recognized from a person or entity other than the service provider as described in the immediately preceding sentence, then the record company shall provide such further information as necessary for the service provider to calculate the additional royalties and indemnify the service provider for such additional royalties. The sole obligation of the record company shall be to pay the licensee such additional royalties if actually payable as royalties hereunder; provided, however, that this shall not affect any otherwise existing right or remedy of the copyright owner nor diminish the licensee's obligations to the copyright owner.

(c) *Computation of subscriber-based royalty rates.* For purposes of paragraphs (a)(3) and (4) of this section, to determine the subscriber-based minimum applicable to any particular subpart C of this part offering, the total number of subscriber-months for the accounting period shall be calculated, taking into account all end users who were subscribers for complete calendar months, prorating in the case of end users who were subscribers for only part of a calendar month, and deducting on a prorated basis for end users covered by a free trial period subject to the free trial royalty rate as described in § 385.24. The product of the total number of subscriber-months for the accounting period and the specified number of cents per subscriber shall be used as the subscriber-based component of the minimum for the accounting period.

**§ 385.24 Free trial periods.**

(a) *General provisions.* This section establishes a royalty rate of zero in the case of certain free trial periods for mixed service bundles, paid locker services and limited offerings under a license pursuant to 17 U.S.C. 115. Subject to the requirements of 17 U.S.C. 115 and the additional provisions of paragraphs (b) through (e) of this section, the free trial royalty rate shall apply to a musical work when a record company transmits or authorizes the transmission, as part of a mixed service bundle, paid locker service or limited offering, of a sound recording that embodies such musical work, only if—

(1) The primary purpose of the record company in providing or authorizing the free trial period is to promote the applicable subpart C of this part offering;

(2) No applicable consideration for making or authorizing the transmissions is received by the record company, or any other person or entity acting on behalf of or in lieu of the record company, except for in-kind promotional consideration used to promote the sale or paid use of sound recordings or audiovisual works embodying musical works or the paid use of music services through which sound recordings or audiovisual works embodying musical works are available;

(3) The free trial period does not exceed 30 consecutive days per subscriber per two-year period;

(4) In connection with authorizing the transmissions, the record company has obtained from the service provider it authorizes a written representation that—

(i) The service provider agrees to maintain for a period of no less than 5 years from the end of each relevant accounting period complete and accurate records of the relevant authorization, and identifying each sound recording of a musical work made available through the free trial period, the licensed subpart C of this part activity involved, and the number of plays or downloads, as applicable, of such recording;

(ii) The service is in all material respects operating with appropriate license authority with respect to the musical works it is using; and

(iii) The representation is signed by a person authorized to make the representation on behalf of the service provider;

(5) Upon receipt by the record company of written notice from the copyright owner of a musical work or agent of the copyright owner stating in good faith that a particular service is in a material manner operating without appropriate license authority from such copyright owner, the record company shall within 5 business days withdraw by written notice its authorization of such uses of such copyright owner's musical works under the free trial royalty rate by that service;

(6) The free trial period is offered free of any charge to the end user; and

(7) End users are periodically offered an opportunity to subscribe to the service during such free trial period.

(b) *Recordkeeping by record companies.* To rely upon the free trial royalty rate for a free trial period, a record company making or authorizing the free trial period shall keep complete and accurate contemporaneous written records of the contractual terms that bear upon the free trial period; and further provided that, if the record company itself is conducting the free trial period, it shall also maintain any additional records described in paragraph (a)(4)(i) of this section. The records required by this paragraph (b) shall be maintained for no less time than the record company maintains records of usage of royalty-bearing uses involving the same type of licensed subpart C of this part activity in the ordinary course of business, but in no event for less than 5 years from the conclusion of the licensed subpart C of this part activity to which they pertain. If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under this paragraph (b) with respect to a specific free trial period, the record company shall provide complete and accurate documentation within 10 business days, except for any information required under paragraph (a)(4)(i) of this section, which shall be provided within 20 business days, and provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the record company shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the record company does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the record company (but not any third-party service it has authorized) shall be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(c) *Recordkeeping by services.* If the copyright owner of a musical work or its agent requests a copy of the information to be maintained under paragraph (a)(4)(i) of this section by a service authorized by a record company with respect to a specific promotion, the service provider shall provide complete and accurate documentation within 20 business days, provided that if the copyright owner or agent requests information concerning a large volume of free trial periods or sound recordings, the service provider shall have a reasonable time, in view of the amount of information requested, to respond to any request of such copyright owner or agent. If the service provider does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the service provider (but not the record company)

will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(d) *Interpretation.* The free trial royalty rate is exclusively for audio-only licensed subpart C of this part activity involving musical works subject to licensing under 17 U.S.C. 115. The free trial royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the free trial royalty rate (including without limitation licensed subpart C of this part activity beyond the time limitations applicable to the free trial royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101 *et seq.*

**§ 385.25 Reproduction and distribution rights covered.**

A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed subpart C of this part activity, solely for the purpose of providing such licensed subpart C of this part activity (and no other purpose).

**§ 385.26 Effect of rates.**

In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.

Dated: May 10, 2012.

**Stanley C. Wisniewski,**

*Copyright Royalty Judge.*

[FR Doc. 2012–11751 Filed 5–16–12; 8:45 am]

BILLING CODE 1410–72–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R08–OAR–2011–0851, FRL–9673–6]

## Approval and Promulgation of Implementation Plans; State of Montana; State Implementation Plan and Regional Haze Federal Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; corrections.

**SUMMARY:** EPA is correcting a proposed rule that appeared in the **Federal Register** on April 20, 2012. The proposed rule includes the proposed Federal Implementation Plan (FIP) to address regional haze in the State of Montana and the proposed approval of revisions to the Montana SIP submitted by the State of Montana through the Montana Department of Environmental Quality on February 17, 2012. We are correcting some typographical errors and clarifying some information with this document.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Hinkle, EPA, Region 8, (303) 312–6561.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we'' or ''our'' is used it means the EPA.

On April 20, 2012, EPA published the proposed rule titled ''Approval and Promulgation of Implementation Plans; State of Montana; State Implementation Plan and Regional Haze Federal Implementation Plan'' (77 FR 23988). *See* docket number EPA–R08–OAR–2011–0851. The following corrections are made to the proposed rule:

1. On page 23992, Footnote 7 is amended to read as follows: ''*Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*, (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (September 2003, EPA–454/B–03–004, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').''

2. On page 24002, Footnote 27 is amended to read as follows: '' ''Modeling Protocol: Montana Regional Haze Federal Implementation Plan (FIP) Support'', University of North Carolina, Contract EP–D–07–102, November 21, 2011.''

3. On page 24004, Footnote 40 is amended to read as follows: ''Ash Grove Update March 2012 (Ash Grove's letter indicates a mean of 14.4 lbs./ton clinker and a 99th percentile of 18.6 lb $NO_X$/ton clinker. This is significantly greater than the 2006 emissions shown in Table 10 for the Midlothian kilns.).''

4. On pages 24013 and 24014, Footnote 75 is amended to read as follows: ''BART analysis by Holcim for Trident Cement Plant, Three Forks, MT (''Holcim Initial Response'') (July 6, 2007); Responses to EPA comments on BART analysis for Trident Cement Plant (''Holcim 2008 Responses'') (Jan. 25, 2008); BART analysis by Holcim for low $NO_X$ burners for Trident Cement Plant (''Holcim Additional Response, June 2009'') (June 9, 2009); Response to EPA letter regarding Confidential Business Information (CBI) claims on BART analysis for Trident Cement Plant (''Holcim Additional Response, August 2009'') (Aug. 12, 2009); Response to EPA request for $NO_X$ and $SO_2$ emissions data for 2008–2010 (''Holcim 2011 Response'') (June 30, 2011); Response to EPA request for emissions and clinker production for Holcim pursuant to CAA section 114(a) (''Holcim 2012 Response'') (Mar. 2, 2012).''

5. On page 24014, in the first column, the first sentence of the second paragraph is amended to read, ''We identified that the following previously described $NO_X$ control technologies are available: LNB, MKF, FGR, SNCR, and SCR.''

6. On page 24018, in Table 52, the annual emissions reduction for fuel switching option 2 is amended to 31.1 tpy, the remaining annual emissions for fuel switching option 2 is amended to 19.1 tpy, the annual emissions reduction for fuel switching option 1 is amended to 16.1 tpy, and the remaining annual emissions for fuel switching option 1 is amended to 34.1 tpy.

7. On page 24020, in Table 60, the emissions reductions from fuel switching option 1 are amended to 16.1 tpy, the average cost effectiveness for fuel switching option 1 is amended to 14,938 dollars per ton, the emissions reduction from fuel switching option 2 is amended to 31.1 tpy, and the average cost effectiveness for fuel switching option 2 is amended to 21,211 dollars per ton.

8. On page 24021, in Table 63, the average cost effectiveness for fuel switching option 2 is amended to 21,211 dollars per ton, and the average cost effectiveness for fuel switching option 1 is amended to 14,938 dollars per ton.

9. On page 24023, Footnote 113 is amended to read as follows: ''Baseline emissions were determined by averaging

the annual emissions from 2008 through 2010 as reported to the CAMD database available at *http://camddataandmaps.epa.gov/gdm/.*''

10. On page 24024, Footnote 123 is amended to read as follows: ''EPA's CCM Sixth Edition, January 2002, EPA/452/B–02–001, Section 1, Chapter 2, p. 2–21.''

11. On page 24025, Footnote 130 is amended to read as follows: ''ICAC February 2008, p. 8.''

12. On page 24031, Footnote 150 is amended to read as follows: ''Baseline emissions were determined by averaging the annual emissions from 2008 to 2010 as reported to the CAMD database available at *http://camddataandmaps.epa.gov/gdm/.*''

13. On page 24059, in the first column, the second paragraph is amended to read, ''We are eliminating the four refineries from further consideration as a result of consent decrees entered into by the owners. Under these consent decrees, emissions have been reduced sufficiently after the 2002 baseline so that the Q/D for each facility is below 10. Specifically, ExxonMobil's emissions in 2009 of $NO_X$ and $SO_2$ were 1,019 tpy, resulting in a Q/D of 6. Cenex's emissions in 2009 of $NO_X$ and $SO_2$ were 727 tpy, resulting in a Q/D of 5. Conoco's emissions in 2009 of $NO_X$ and $SO_2$ were 1,087 tpy, resulting in a Q/D of 8. Montana Refining's emissions in 2009 of $NO_X$ and $SO_2$ were 122 tpy, resulting in a Q/D of 2. The consent decrees are available in the docket.''

14. On page 24063, in the first column, the first sentence of the last paragraph is amended to read, ''We are relying on CELP's estimates that SCR would take approximately 26 months to install and that SNCR would take 16 to 24 weeks to install.[239]''

15. On page 24064, the title for the last column of Table 162 is amended to read, ''Remaining emissions (tpy).''

16. On page 24070, in the third column, the fourth sentence of the second paragraph is amended to read, ''This control option is functionally equivalent to LSFO in terms of concept and control efficiency.''

17. On page 24071, in the first column, the second full sentence of the first paragraph is amended to read, ''We used 85% control for this analysis.''

18. On page 24071, in the first column, the sixth sentence of the second paragraph is amended to read, ''We used 70% control for this analysis (about a 10% improvement over existing controls).''

19. On page 24074, in the third column, the first sentence of the fifth paragraph is amended to read, ''We identified that the following technologies to be available: extending the Claus reaction into a lower temperature liquid phase (the Sulfreen® process) and tail gas scrubbing (Wellman-Lord, SCOT, and traditional FGD processes).''

20. On page 24074, in the third column, the first sentence of the sixth paragraph is amended to read, ''In the Sulfreen® process, the Claus reaction is extended at low temperatures (260 to 300 °F) to recover $SO_2$ and $H_2S$ in the tail gas.''

21. On page 24075, in the third column, the third paragraph is amended to read, ''Both the SCOT and Sulfreen® processes are feasible; however, in the BART Guidelines, EPA states that it may be appropriate to eliminate from further consideration technologies that provide similar control levels at higher cost. *See* 70 FR 39165 (July 6, 2005). We think it is appropriate to do the same for RP determinations. In this case, Sulfreen® systems reportedly can achieve 98% to 99.5% sulfur recovery efficiency while SCOT can reportedly achieve sulfur recovery as high as 99.8% to 99.9%. The cost is higher for the Sulfreen® system when compared to the SCOT process. Because the SCOT process is more effective and costs less than the Sulfreen® system, the Sulfreen® system was not considered further.''

22. On page 24076, in the second column, the first sentence of the third paragraph is amended to read, ''Plum Creek Manufacturing's Columbia Falls Operation, in Columbia Falls, Montana consists of a sawmill, a planer, and plywood and medium density fiberboard (MDF) processes.''

23. On page 24097, the following information is added to the third column after the second paragraph, ''K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a ''major rule'' as defined by 5 U.S.C. 804(2).''

24. On page 24097, in the third column, under Subpart BB—Montana, the first line of number three is amended to read, ''3. Add section 52.1395 to read as follows:'' On page 24097, in the third column, under Subpart BB—Montana, the first line of number three is amended to read, ''3. Add section 52.1395 to read as follows:''

25. On page 24098, section 52.1396 (c)(1) is amended to read, ''The owners/operators of EGUs subject to this section shall not emit or cause to be emitted PM, $SO_2$ or $NO_X$ in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu), averaged over a rolling 30-day period for $SO_2$ and $NO_X$:''

26. On page 24098, section 52.1396 (c)(2) is amended to read, ''The owners/operators of cement kilns subject to this section shall not emit or cause to be emitted PM, $SO_2$ or $NO_X$ in excess of the following limitations, in pounds per ton of clinker produced, averaged over a rolling 30-day period for $SO_2$ and $NO_X$:''

27. On page 24099, the following is added to section 52.1396 (g), ''(5) All particulate matter stack test results.''

28. On page 24099, section 52.1396 (h)(4) is amended to read, ''(4) Owner/operator of each unit shall submit results of any particulate matter stack tests conducted for demonstrating compliance win the particulate matter BART limits in section (c) above, within 60 days after completion of the test.''

29. On page 24100, section 52.1396 (h)(6) is amended to read, ''(6) Any other records required by 40 CFR part 60, Subpart F, or 40 CFR part 60, Appendix F, Procedure 1.''

30. On page 24100, section 52.1396 (i)(5) is added to read, ''(5) Owner/operator of each unit shall submit semi-annual reports of any excursions under the approved CAM plan in accordance with the schedule specified in the source's title V permit.''

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 8, 2012.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2012–11967 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 131

**[EPA–HQ–OW–2009–0596; FRL–9670–7]**

**RIN 2040–AF41**

## Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed delay of effective date.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to extend the July 6, 2012, effective date of the ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters;

Final Rule'' (inland waters rule) for three months to October 6, 2012. EPA also is soliciting comment on extending the July 6, 2012, effective date by one year to July 6, 2013. EPA's inland waters rule as promulgated on December 6, 2010, included an effective date of March 6, 2012, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposal to extend the July 6, 2012, effective date for the inland waters rule does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision. On March 5, 2012, EPA extended the March 6, 2012, effective date to July 6, 2012. In this proposal, EPA is requesting comment on extending the effective date for the ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule'' from July 6, 2012 to October 6, 2012, or in the alternative from July 6, 2012 to July 6, 2013.

**DATES:** Comments must be received on or before June 18, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0596, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: ow-docket@epa.gov.*
3. *Mail to:* Water Docket, U.S. Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2009–0596.
4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2009–0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OW–2009–0596. EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information with disclosure restricted by statute. Certain other material, such as copyright material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202–566–1744, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number 202–564–5257; email address: *bone.tracy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*Does this action apply to me?*

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

| Category | Examples of potentially affected entities |
|---|---|
| Industry | Industries discharging pollutants to lakes and flowing waters in the State of Florida. |
| Municipalities | Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida. |
| Stormwater Management Districts | Entities responsible for managing stormwater runoff in Florida. |

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities which EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon,

influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

On December 6, 2010, EPA's final inland waters rule, entitled ''Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule,'' was published in the **Federal Register** at 75 FR 75762, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll a for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translate Florida's narrative nutrient provision at Subsection 62–302–530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) The December 2010 final action seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

As stated in 75 FR 75807 (December 6, 2010), the rule was scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. EPA selected the March 6, 2012, effective date for the criteria part of the rule to allow time for EPA to work with stakeholders and the Florida Department of Environmental Protection (FDEP) on important implementation issues; to help the public and all affected parties better understand the final criteria and the basis for those criteria; and for EPA to engage and support, in full partnership with FDEP, the general public, stakeholders, local governments, and sectors of the regulated community across the State in a process of public outreach education, discussion, and constructive planning, (75 FR 75787, December 6, 2010).

On December 22, 2011 (76 FR 79604), EPA proposed to extend the March 6, 2012, effective date of the inland waters rule to June 4, 2012. EPA received six comments on its proposal. EPA considered the public comments and the continued progress by the FDEP toward adoption of nutrient water quality standards. EPA decided that a four month extension was warranted (77 FR 13497), and thus extended the effective date of the inland waters rule to July 6, 2012.

## III. Proposed Extension of July 6, 2012 Effective Date

### *A. Current Inland Waters Rule Effective Date and Rationale*

The current effective date for the inland waters rule is July 6, 2012 except, as noted earlier, for the site-specific alternative criteria (SSAC) provision, which became effective February 4, 2011.

As discussed at length in the December 22, 2011, proposal to extend the effective date of the inland waters rule (76 FR 79604), EPA at both the Headquarters and Regional levels has worked in collaboration with the State on outreach and education efforts. In the same proposal, EPA also discussed that a further extension of the effective date of the inland waters rule might be needed to allow FDEP to submit the recently established State numeric nutrient rules to EPA for review and action under section 303(c) of the CWA, for EPA to complete its review of the State rules, and for EPA to withdraw any Federal numeric nutrient criteria corresponding to any State-adopted numeric nutrient criteria that have been approved by EPA.

### *B. Rationale for Extending the July 6, 2012 Effective Date*

EPA is proposing to extend the effective date of the inland waters rule (with the exception of the SSAC provision, which is already in effect) for three months to October 6, 2012 for the reasons discussed in this section. EPA also requests comment on the possibility of extending the July 6, 2012 effective date for one year to July 6, 2013 or further.

Since the promulgation of the December 6, 2010 final rule for Florida's inland waters, EPA has continued to work in close coordination with the State of Florida as the State develops its own rulemaking for numeric nutrient criteria (NNC rules) that are consistent with requirements of the Clean Water Act (CWA), address the water quality needs of the State, and support effective permit implementation, water body assessment and listing, and development of TMDLs. The State legislature has exempted the state NNC rules from legislative ratification and directed the FDEP to submit the rules to the EPA for review. On February 20, 2012, the FDEP sent the rules to EPA, which sets numeric nutrient criteria for lakes, spring vents, streams, and certain estuaries in Florida. The FDEP also submitted material supporting those criteria. EPA looks forward to receiving notification from the State of Florida that the rules have been officially adopted as revisions to the State's water quality standards.

A petition was filed with the Florida Department of Administrative Hearings challenging the validity of FDEP's NNC rules. A hearing was held the week of February 27, 2012, and the Administrative Law Judge has not yet issued an order in the case. EPA anticipates that the judge will issue a ruling in May. At the time of this proposal, the outcome of the administrative challenge is uncertain. The three month extension of the effective date of the inland waters rule would allow time for the administrative challenge to be resolved, and, if FDEP prevails, for FDEP to notify EPA that the NNC rules have been officially adopted as revisions to the State's water quality standards. If EPA were to approve Florida's rules, EPA would then consider proposing and finalizing an additional extension to allow time for EPA to withdraw any Federal numeric nutrient criteria that correspond to criteria that have been adopted by Florida and approved by EPA.

Final State numeric nutrient criteria could have significant implications for many interested parties and members of the public in the State. In the event that alternative Florida numeric nutrient criteria are established that assure attainment of State designated uses consistent with applicable CWA provisions, there could be uncertainty regarding implementation of EPA's inland water numeric criteria. Successful State action on this issue could also affect the obligations and expectations of a wide range of affected stakeholders whose actions relate to the discharge or contribution of nitrogen and phosphorus pollution to State waters. Extending the effective date of EPA's inland waters rule from July 6, 2012, to October 6, 2012, would avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviews State criteria for approval or disapproval under CWA section 303(c). Further,

extending the effective date to July 6, 2013, would avoid the confusion and inefficiency that could occur should Federal criteria take effect after State criteria have been approved and while EPA is in the process of withdrawing Federal criteria for corresponding waters.

Should EPA decide to extend the effective date of the inland waters rule, the Agency will continue to work with Florida towards implementation of either Federal or State numeric nutrient criteria. As EPA stated in the preamble to the final inland waters rule, the opportunity presented by numeric nutrient criteria—for substantial nitrogen and phosphorus loadings reductions in the State—''would be greatly facilitated and expedited by strongly coordinated and well-informed stakeholder engagement, planning, and support before a rule of this significance and broad scope begins to take effect and be implemented through the State's regulatory programs'' (75 FR 75787, December 6, 2010).

EPA solicits comments regarding the proposed extension of three months to October 6, 2012, for the effective date of the inland waters rule, as well as a proposed extension of one year to July 6, 2013, for the same.

## IV. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is, therefore, not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. This action merely extends the effective date of an already promulgated regulation. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

### *E. Executive Order 13132 (Federalism)*

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

### *F. Executive Order 13175*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally-approved WQS in their respective jurisdictions. These Tribes are not subject to this proposed rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This proposed action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

**List of Subjects in 40 CFR Part 131**

Environmental protection, Water quality standards, Nitrogen/phosphorus pollution, Nutrients, Florida.

Dated: May 5, 2012.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2012–11843 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 272

**[EPA–R06–RCRA–2011–0484; FRL–9652–8]**

## Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', Oklahoma's authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conversation and Recovery Act (RCRA).

**DATES:** Send written comments by June 18, 2012.

**ADDRESSES:** Send written comments to Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, (214) 665–8533.

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. The EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

Dated: March 16, 2012.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2012–11876 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 1

**[MD Docket No. 12–116; FCC 12–48]**

## Assessment and Collection of Regulatory Fees for Fiscal Year 2012

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $339,844,000 that Congress has required the Commission to collect for fiscal year 2012. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

**DATES:** Submit comments on or before May 31, 2012, and reply comments on or before June 7, 2012.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 12–116, 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://www.fcc.gov/cgb/ecfs*. Follow the instructions for submitting comments.
- *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.
- *Email: ecfs@fcc.gov*. Include MD Docket No. 12–116 in the subject line of the message.
- *Mail:* 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 should be addressed to 445 12th Street SW., Washington, DC 20554.

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:** Roland Helvajian, Office of Managing Director at (202) 418–0444.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 12–48, MD Docket No. 12–116, adopted on May 3, 2012 and released May 4, 2012. 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, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com*, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

### I. Procedural Matters

*A. Ex Parte Rules-Permit-but Disclose Proceeding*

1. This is a ''permit-but-disclose'' proceeding subject to the requirements

of the Commission's *ex parte rules.*[1] *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[2] Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

*B. Comment Filing Procedures*

2. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 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: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov*.

• *Paper Filers:* Parties who choose to file by paper must file an original and four copies 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 St. 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 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.

*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).

3. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov*.

*C. Paperwork Reduction Act*

5. This *NPRM* does not contain proposed or modified information collection burden (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).

*D. Initial Regulatory Flexibility Analysis*

6. An initial regulatory flexibility analysis (''IRFA'') is contained herein. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking* (NPRM). The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

**II. Notice of Proposed Rulemaking**

**III. Introduction and Summary**

7. In this *Notice of Proposed Rulemaking* (''*FY 2012 NPRM*''), we propose to collect $339,844,000 in regulatory fees for Fiscal Year (''FY'') 2012, pursuant to Section 9 of the Communications Act of 1934, as amended (the ''Act''). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[3] The annual amount of regulatory fees to be collected is established each year in the Commission's Annual Appropriations Act, which funds the Commission.[4] In this annual regulatory fee proceeding, we retain many of the current methods, policies, and procedures for collecting Section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during a September 2012 filing window in order to collect the required amount by the end of our fiscal year.

8. This *FY 2012 NPRM* is one of three Notices of Proposed Rulemakings on regulatory fees that the Commission expects to release on or before FY 2013. Because of the complexity of the regulatory fee issues involved, the Commission will seek comment in phases.

9. Since 1994 when the first regulatory fees were collected, the communications industry has undergone a rapid transformation. At the same time, the current method for assessing regulatory fees has changed only slightly since its inception in 1994.[5] In FY 2008, the Commission released a *Further Notice of Proposed Rulemaking* which identified some of the issues raised by commenters with regard to the need for fundamental reform of our regulatory fee assessment methodology.[6] In our FY 2011 Regulatory Fees *Report & Order,* we stated that we would initiate a further rulemaking to update the record on regulatory fee rebalancing, as well as expand the inquiry to include new issues and services not covered by the

[1] *See* 47 CFR 1.200 *et seq.*

[2] *See* 47 CFR 1.1206(b)(2).

[3] 47 U.S.C. 159(a).

[4] *See* the *Consolidated Appropriations Act of 2012,* Public Law 112–74 (December 23, 2011).

[5] 47 U.S.C. 159(a) and 159(b).

[6] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, RM–11312, Report and Order and Further Notice of Proposed Rulemaking, 73 FR 50201 (August 26, 2008) at paras. 38–41.

FY 2008 *Further Notice of Proposed Rulemaking.*[7]

10. In re-examining the regulatory fee program, as enacted by Congress and codified in section 9 of the Communications Act, 47 U.S.C. 159, the Commission will undertake two separate Notices of Proposed Rulemakings (''Reform Proceedings'') which will address the issues in two phases. In Phase I, we will primarily consider the allocation percentages of core bureaus involved in regulatory fee activity and how we calculate these percentages, and in Phase II, we will address other outstanding substantive and procedural issues. Given the breadth and complexity of the issues involved, the issuance of two separate Notices of Proposed Rulemakings will permit more orderly and consistent analysis of the issues and facilitate their timely resolution. We will issue a Report and Order finalizing our decision on all the issues raised in the Reform Proceedings, including new cost allocations and revised regulatory fees in sufficient time to allow for their implementation in FY 2013.

11. Although the Commission will reexamine its regulatory fee program in two separate Notices of Proposed Rulemakings, the regular collections FY 2012 NPRM and the subsequent FY 2012 *Report & Order* will be adopted in sufficient time to collect regulatory fees in FY 2012. The proposed FY 2012 regulatory fee rates are listed in the table below entitled, ''Table—FY 2012 Schedule of Regulatory Fees.'' In calculating these FY 2012 fee rates, the Commission proposes to: (1) incorporate the results of the 2010 Census data into our broadcast population data, (2) assess a regulatory fee for each facility operating either in an analog or digital mode (but not both) for Low Power, Class A, and TV Translators/Boosters, (3) maintain the FY 2012 Interstate Telecommunications Service Provider (ITSP) fee rate at the same level as in FY 2011, (4) require regulatees filing a request for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format, and (5) seek general comment on improving our collection procedures and processes.

## IV. Notice of Proposed Rulemaking

12. The Section 9 regulatory fee proceeding is an annual rulemaking process for the Commission to collect the required fee amount each year. In this *FY 2012 NPRM,* we propose to retain the section 9 regulatory fee methodology used in FY 2011 and in prior fiscal years, with some adjustments to maintain the FY 2012 ITSP fee rate at the same level as in FY 2011. These adjustments are reflected in the ITSP fee rate, and in the fee rates of all remaining fee categories listed in the table below, ''Table—FY 2012 Schedule of Regulatory Fees.''

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[7] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2011,* Report and Order, 26 FCC Rcd 10812 (2011) at para. 28 (''*FY 2011 Report and Order*'').

**TABLE – FY 2012 Schedule of Regulatory Fees**

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 35 |
| Microwave (per license) (47 CFR part 101) | 20 |
| 218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 70 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 50 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 15 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 15 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 10 |
| Aviation (Ground) (per license) (47 CFR part 87) | 15 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 1.50 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .17 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27) | 475 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 475 |
| AM Radio Construction Permits | 550 |
| FM Radio Construction Permits | 700 |
| TV (47 CFR part 73) VHF Commercial | |
| Markets 1-10 | 87,425 |
| Markets 11-25 | 72,925 |
| Markets 26-50 | 41,675 |
| Markets 51-100 | 20,725 |
| Remaining Markets | 5,800 |
| Construction Permits | 5,800 |
| TV (47 CFR part 73) UHF Commercial | |

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| Markets 1-10 | 34,650 |
| Markets 11-25 | 31,950 |
| Markets 26-50 | 21,875 |
| Markets 51-100 | 12,625 |
| Remaining Markets | 3,425 |
| Construction Permits | 3,425 |
| Satellite Television Stations (All Markets) | 1,350 |
| Construction Permits – Satellite Television Stations | 890 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 385 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 475 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .95 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00375 |
| Earth Stations (47 CFR part 25) | 275 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 132,350 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 142,600 |
| International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit) | .35 |
| International Bearer Circuits - Submarine Cable | See Table Below |
| | |

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## FY 2011 SCHEDULE OF REGULATORY FEES (continued)

| FY 2011 RADIO STATION REGULATORY FEES | | | | | | |
|---|---|---|---|---|---|---|
| **Population Served** | **AM Class A** | **AM Class B** | **AM Class C** | **AM Class D** | **FM Classes A, B1 & C3** | **FM Classes B, C, C0, C1 & C2** |
| **<=25,000** | $700 | $575 | $525 | $600 | $675 | $850 |
| **25,001 – 75,000** | $1,400 | $1,150 | $800 | $900 | $1,350 | $1,500 |
| **75,001 – 150,000** | $2,100 | $1,450 | $1,050 | $1,500 | $1,850 | $2,750 |
| **150,001 – 500,000** | $3,150 | $2,450 | $1,575 | $1,800 | $2,875 | $3,600 |
| **500,001 – 1,200,000** | $4,550 | $3,750 | $2,625 | $3,000 | $4,550 | $5,300 |
| **1,200,001 – 3,000,00** | $7,000 | $5,750 | $3,950 | $4,800 | $7,425 | $8,500 |
| **>3,000,000** | $8,400 | $6,900 | $5,000 | $6,000 | $9,450 | $11,050 |

FY 2012 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

| Submarine cable systems (capacity as of December 31, 2011) | Fee amount | Address |
|---|---|---|
| <2.5 Gbps | $13,250 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 2.5 Gbps or greater, but less than 5 Gbps | 26,500 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 5 Gbps or greater, but less than 10 Gbps | 52,975 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 10 Gbps or greater, but less than 20 Gbps | 105,975 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 20 Gbps or greater | 211,925 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |

13. In each fiscal year since FY 1999, the Commission allocated the amount appropriated by Congress (*e.g.*, $339,844,000 in FY 2012) across the various fee categories, and then divided these allocated amounts by the number of estimated payment units in each fee category to determine the unit fee.[8] As in prior years, for cases involving small multiyear fees (*e.g.,* licenses that are renewed over a multiyear term), we divided the allocated amounts by their respective estimated payment units, as well as by the term of the license (5-year or 10-year) to determine the unit fee, which was then rounded to be consistent with the requirements of section 9(b)(2) of the Act. This process is illustrated in the table below, ''Table—Calculation of FY 2012 Revenue Requirements and Pro-Rata Fees.''

[8] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (''CMRS'') Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider (''ITSP'') fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

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**TABLE – Calculation of FY 2012 Revenue Requirements and Pro-Rata Fees**

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

| Fee Category | FY 2012 Payment Units | Years | FY 2011 Revenue Estimate | Pro-Rated FY 2012 Revenue Require-ment | Computed New FY 2012 Regulatory Fee | Rounded New FY 2012 Regula-tory Fee | Expected FY 2012 Revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (Exclusive Use) | 1,400 | 10 | 480,000 | 499,057 | 36 | 35 | 490,000 |
| PLMRS (Shared use) | 15,000 | 10 | 2,300,000 | 2,388,342 | 16 | 15 | 2,250,000 |
| Microwave | 13,200 | 10 | 2,550,000 | 2,352,695 | 18 | 20 | 2,640,000 |
| 218-219 MHz (Formerly IVDS) | 5 | 10 | 1,950 | 3,565 | 71 | 70 | 3,500 |
| Marine (Ship) | 6,550 | 10 | 670,000 | 784,232 | 12 | 10 | 655,000 |
| GMRS | 7,700 | 5 | 232,500 | 285,175 | 7 | 5 | 192,500 |
| Aviation (Aircraft) | 2,900 | 10 | 460,000 | 356,469 | 12 | 10 | 290,000 |
| Marine (Coast) | 285 | 10 | 132,500 | 142,588 | 50 | 50 | 142,500 |
| Aviation (Ground) | 900 | 10 | 165,000 | 142,588 | 16 | 15 | 135,000 |
| Amateur Vanity Call Signs | 14,300 | 10 | 207,320 | 213,881 | 1.50 | 1.50 | 214,500 |
| AM Class A[4a] | 63 | 1 | 257,400 | 249,528 | 3,961 | 3,950 | 248,850 |
| AM Class B[4b] | 1,472 | 1 | 3,057,875 | 3,101,280 | 2,107 | 2,100 | 3,091,200 |
| AM Class C[4c] | 879 | 1 | 1,078,650 | 1,105,054 | 1,257 | 1,250 | 1,098,750 |
| AM Class D[4d] | 1,546 | 1 | 3,642,325 | 3,671,631 | 2,375 | 2,375 | 3,671,750 |
| FM Classes A, B1 & C3[4e] | 3,055 | 1 | 7,629,300 | 7,729,024 | 2,530 | 2,525 | 7,713,875 |
| FM Classes B, C, C0, C1 & C2[4f] | 3,043 | 1 | 9,410,775 | 9,475,723 | 3,114 | 3,125 | 9,509,375 |
| AM Construction Permits | 65 | 1 | 44,100 | 35,647 | 548 | 550 | 35,750 |
| FM Construction Permits[1] | 120 | 1 | 101,925 | 84,000 | 700 | 700 | 84,000 |
| Satellite TV | 132 | 1 | 166,250 | 178,234 | 1,350 | 1,350 | 178,200 |
| Satellite TV Construction Permit | 4 | 1 | 2,010 | 3,565 | 891 | 890 | 3,560 |
| VHF Markets 1-10 | 20 | 1 | 1,692,500 | 1,748,391 | 87,420 | 87,425 | 1,748,500 |
| VHF Markets 11-25 | 25 | 1 | 1,772,550 | 1,823,318 | 72,933 | 72,925 | 1,823,125 |
| VHF Markets 26-50 | 36 | 1 | 1,457,100 | 1,500,603 | 41,683 | 41,675 | 1,500,300 |
| VHF Markets 51-100 | 60 | 1 | 1,183,000 | 1,244,069 | 20,734 | 20,725 | 1,243,500 |
| VHF Remaining Markets | 137 | 1 | 774,700 | 793,995 | 5,796 | 5,800 | 794,600 |

| Fee Category | FY 2012 Payment Units | Years | FY 2011 Revenue Estimate | Pro-Rated FY 2012 Revenue Require-ment | Computed New FY 2012 Regulatory Fee | Rounded New FY 2012 Regula-tory Fee | Expected FY 2012 Revenue |
|---|---|---|---|---|---|---|---|
| VHF Construction Permits[1] | 2 | 1 | 12,200 | 11,600 | 5,800 | 5,800 | 11,600 |
| UHF Markets 1-10 | 111 | 1 | 3,915,450 | 3,845,518 | 34,644 | 34,650 | 3,846,150 |
| UHF Markets 11-25 | 108 | 1 | 3,525,650 | 3,449,769 | 31,942 | 31,950 | 3,450,600 |
| UHF Markets 26-50 | 135 | 1 | 3,016,800 | 2,952,606 | 21,871 | 21,875 | 2,953,125 |
| UHF Markets 51-100 | 227 | 1 | 2,933,350 | 2,863,357 | 12,614 | 12,625 | 2,865,875 |
| UHF Remaining Markets | 247 | 1 | 864,600 | 845,762 | 3,424 | 3,425 | 845,975 |
| UHF Construction Permits[1] | 7 | 1 | 32,750 | 23,975 | 3,425 | 3,425 | 23,975 |
| Broadcast Auxiliaries | 24,800 | 1 | 268,500 | 285,175 | 11 | 10 | 248,000 |
| LPTV/Translators/ Boosters/Class A TV | 3,712 | 1 | 1,424,765 | 1,425,876 | 384 | 385 | 1,429,120 |
| CARS Stations | 375 | 1 | 173,900 | 178,234 | 475 | 475 | 178,125 |
| Cable TV Systems | 62,200,000 | 1 | 58,962,000 | 58,995,618 | 0.9485 | 0.95 | 59,090,000 |
| Interstate Telecommunication Service Providers | $39,900,000,000 | 1 | 148,125,000 | 149,625,000 | 0.003750 | 0.00375 | 149,625,000 |
| CMRS Mobile Services (Cellular/Public Mobile) | 310,000,000 | 1 | 50,660,000 | 51,950,707 | 0.1676 | 0.17 | 52,700,000 |
| CMRS Messag. Services | 3,400,000 | 1 | 336,000 | 272,000 | 0.0800 | 0.080 | 272,000 |
| BRS[2] | 950 | 1 | 523,900 | 451,250 | 475 | 475 | 451,250 |
| LMDS | 475 | 1 | 161,200 | 225,625 | 475 | 475 | 225,625 |
| Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common) | 3,250,853 | 1 | 1,136,518 | 1,149,256 | .354 | .35 | 1,137,799 |
| Submarine Cable Providers (see chart in Appendix C)[3] | 38.313 | 1 | 8,080,734 | 8,118,938 | 211,914 | 211,925 | 8,119,377 |
| Earth Stations | 3,250 | 1 | 875,875 | 891,172 | 274 | 275 | 893,750 |
| | | | | | | | |
| Space Stations (Geostationary) | 87 | 1 | 11,429,625 | 11,513,948 | 132,344 | 132,350 | 11,514,450 |
| Space Stations (Non-Geostationary | 6 | 1 | 850,500 | 855,526 | 142,588 | 142,600 | 855,600 |

| Fee Category | FY 2012 Payment Units | Years | FY 2011 Revenue Estimate | Pro-Rated FY 2012 Revenue Require-ment | Computed New FY 2012 Regulatory Fee | Rounded New FY 2012 Regula-tory Fee | Expected FY 2012 Revenue |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| ****** Total Estimated Revenue to be Collected | | | 336,599,047 | 339,843,566 | | | 340,495,730 |
| ****** Total Revenue Requirement | | | 335,794,000 | 339,844,000 | | | 339,844,000 |
| Difference | | | 805,048 | (434) | | | 651,730 |

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix C lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Second Report and Order (MD Docket No. 08-65, RM-11312), released March 24, 2009; and Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Order (MD Docket No. 09-65, MD Docket No. 08-65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2012 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2012 regulatory fees for AM/FM radio station are listed on a grid located at the end of table entitled, "TABLE – FY 2012 Schedule of Regulatory Fees."

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14. The list of sources for the estimated FY 2012 payment units appears in the Table below entitled, ''Table—Sources of Payment Unit Estimates for FY 2012.'' We estimated the number of payment units using licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases are used; in other instances, actual prior year payment records and/or industry and trade association projections are used in determining the payment units.[9] Where appropriate, we adjusted and rounded our final estimates to take into account factors that could affect the number of units for which regulatees submit payment. Such factors include waivers and exemptions filed in FYs 2011 and 2012, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2012 payment units, therefore, are based on the variable factors that are relevant to each fee category. The fee rate may also be rounded or adjusted slightly to account for these variables.

In order to calculate individual service fees for FY 2012, we adjusted FY 2011 payment units for each service to more accurately reflect expected FY 2012 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System

[9] The databases we consulted are the following: the Commission's Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS''), and Cable Operations and Licensing System (''COALS''). We also consulted reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report,* as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

(''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS''), and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2012 estimates with actual FY 2011 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2012 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2012 payment units are based on FY 2011 actual payment units, it does not necessarily mean that our FY 2012 projection is exactly the same number as in FY 2011. We have either rounded the FY 2012 number or adjusted it slightly to account for these variables.

TABLE—SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2012

| Fee category | Sources of payment unit estimates |
|---|---|
| Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed. | Based on Wireless Telecommunications Bureau (''WTB'') projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis. |
| CMRS Cellular/Mobile Services | Based on WTB projection reports, and FY 2011 payment data. |
| CMRS Messaging Services | Based on WTB reports, and FY 2011 payment data. |
| AM/FM Radio Stations | Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units. |
| UHF/VHF Television Stations | Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units. |
| AM/FM/TV Construction Permits | Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units. |
| LPTV, Translators and Boosters, Class A Television | Based on CDBS data, adjusted for exemptions, and actual FY 2011 payment units. |
| Broadcast Auxiliaries | Based on actual FY 2011 payment units. |
| BRS (formerly MDS/MMDS) | Based on WTB reports and actual FY 2011 payment units. |
| LMDS | Based on WTB reports and actual FY 2011 payment units. |
| Cable Television Relay Service (''CARS'') Stations | Based on data from Media Bureau's COALS database and actual FY 2011 payment units. |
| Cable Television System Subscribers | Based on publicly available data sources for estimated subscriber counts and actual FY 2011 payment units. |
| Interstate Telecommunication Service Providers | Based on FCC Form 499–Q data for the four quarters of calendar year 2010, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2012 FCC Form 499–A worksheets in April, 2012. |
| Earth Stations | Based on International Bureau (''IB'') licensing data and actual FY 2011 payment units. |
| Space Stations (GSOs & NGSOs) | Based on IB data reports and actual FY 2011 payment units. |
| International Bearer Circuits | Based on IB reports and submissions by licensees. |
| Submarine Cable Licenses | Based on IB license information. |

*A. Regulatory Fee Obligations for AM and FM Radio Stations*

15. The fee methodology for AM and FM radio stations is based on a number of factors, including facility attributes and the population served by each station. The calculation of the population served is determined by coupling current United States Census Bureau data with technical and engineering data, as detailed in the table below entitled, ''Table—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages.'' In FY 2012, the Commission will be incorporating the results of the 2010 Census data into our broadcast population data. These population counts, along with the station's class and type of service, are the basis for determining regulatory fees. We invite interested parties to comment on incorporating the 2010 Census data into our broadcast population data.

TABLE—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINE STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION COVERAGES

| AM Stations |
|---|
| For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') (figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area. |
| **FM Stations** |
| The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's Rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area. |

*B. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters*

16. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters still remains voluntary, even though a transition date of September 1, 2015 has been set for the completion of this transition. Historically, we have only considered the digital transition in the context of regulatory fees applicable to full-service television stations, and not to Low Power, Class A, and TV Translators/Boosters. Consequently, the ''digital only'' exemption that previously prevailed does not apply to Low Power, Class A, and TV Translator/Booster facilities. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, some of these facilities may transition from analog to digital service more rapidly than others. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, we conclude that a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is simulcasting in both analog and digital modes, a single regulatory fee will be assessed for the analog facility and its corresponding digital component. We request comment on this proposal. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

*C. Regulatory Fee Obligations of Interstate Telecommunications Service Providers*

17. In our FY 2011 Regulatory Fee *Report and Order,* we assessed the Interstate Telecommunications Service Provider (''ITSP'') industry a regulatory fee of $.00375 per revenue dollar. This fee reflects the Commission's decision to limit the increase in ITSP regulatory fees given the continuing decrease in the revenue base upon which ITSP regulatory fees are calculated. In FY 2011, we stated that we would rebalance ITSP regulatory fees in the context of more fundamental regulatory fee reform, which we will address in the forthcoming Reform Proceedings. Because we limited the increase in ITSP regulatory fees in FY 2011, and we expect that rebalancing ITSP fees will reduce the regulatory fee allocation for the ITSP industry, we propose, as an interim measure, to assess FY 2012 ITSP regulatory fees at the same fee rate as in FY 2011 (.00375). In addition, consistent with our approach in FY 2011, we propose to allocate the remaining revenue requirement across all other fee categories. We seek comment on these proposals.

*D. Improving Public Information on Waiver Requests and Decisions*

18. To improve the openness and transparency of our fee waiver decisions, we will shortly announce improvements in the way that we provide public information about the waiver requests that are filed and the decisions resolving them. To assist in the implementation of these changes, we propose to require regulatees filing a request for a refund, waiver, fee reduction, or deferment of payment of an application or regulatory fee to use an online filing system rather than submitting their requests in hardcopy format. We believe that an online filing system will complement other existing online Commission systems already in place, such as the Broadcast Radio and Television Electronic Filing System (more commonly referred to as CDBS), the Cable Operations and Licensing System (COALS), and Consumer Complaint Forms. The resulting fee waiver filing system will include such documents as the filed request, any relevant supporting documentation, and the resulting decision. We propose to apply the provisions of section 0.459 to requests that electronically filed material be withheld from public inspection.[10] We invite comment from regulatees regarding the electronic filing of refund, waiver, fee reduction, and deferment requests.

*E. Administrative and Operational Issues*

19. In FY 2009, the Commission implemented several changes in

[10] Specifically, Section 0.457(a)(2) through (g) describe, *inter alia,* how confidential material should be submitted electronically, what showings must be made to justify withholding electronically submitted information from public inspection, and how the Commission will resolve confidentiality requests.

procedures that simplified the payment and reconciliation processes of FY 2009 regulatory fees. In FY 2012, the Commission will continue to promote greater use of technology (and less use of paper) in improving our regulatory fee notification and collection process. We seek general comment on improving our fee collection process.

20. In FY 2009, we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as ''Fee Filer'').[11] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FCC Registration Number (''FRN'') and password.[12] This change was beneficial to both licensees and to the Commission. For licensees, the mandatory use of Fee Filer eliminates the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format makes it much easier to process payments efficiently and effectively. We seek general comment on how to improve the use of Fee Filer in filing annual regulatory fees. Because licensees have different options when making their regulatory fee payment (by credit card, check, wire transfer, etc.), the mandatory requirement to use Fee Filer is for the *filing* of annual regulatory fees using Fee Filer, not the *payment* of regulatory fees through Fee Filer. In the upcoming Reform Proceeding, we will examine whether to expand the use of Fee Filer for the filing of regulatory fees.

## V. Fee Collection Procedures

21. Included below are procedural items as well as our current payment and collection methods which we have revised over the past several years to expedite the processing of regulatory fee payments. We do not propose changes to these procedures. Rather, we include them here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

### *A. Public Notices and Fact Sheets*

22. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and relevant regulatory fee payment procedures. We will continue to post this information on *http://transition.fcc.gov/fees/regfees.html*, rather than mailing it to regulatees.

### *B. Pre-Bill Notification and Collection of Regulatory Fees*

23. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: ITSPs, Geostationary (''GSO'') and Non-Geostationary (''NGSO'') satellite space station licensees,[13] holders of Cable Television Relay Service (''CARS'') licenses, and Earth Station licensees.[14] The remaining regulatees did not receive pre-bills. In our FY 2009 Report and Order, the Commission decided to make the information contained in these pre-bills viewable in Fee Filer, rather than mailing pre-bills to licensees via surface mail.[15] We continued this practice in FY 2010 and FY 2011 by placing the pre-bill information on Fee Filer, where it could be accessed by licensees through the Commission's Web site. Regulatees can also look to the Commission's Web site for information on upcoming events and deadlines relating to regulatory fees.

### *C. Assessment Notifications*

#### 1. Media Services Licensees

24. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[16] These notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative to be more electronic and paperless.[17] In our FY 2010 *Notice of Proposed Rulemaking,* we proposed to discontinue mailing the media notifications beginning in FY 2011, relying instead on information on the Commission's Web site and the use of the Commission-authorized Web site at *www.fccfees.com.*[18] In FY 2012, we will continue the practice of not mailing hardcopy notification assessment letters to media licensees.

#### 2. CMRS Cellular and Mobile Services Assessments

25. We will continue to follow our current procedures for conveying CMRS subscriber counts to providers. We will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast (''NRUF'') report that is based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out'').[19] The letter will include a listing of the carrier's Operating Company Numbers (''OCNs'') upon which the assessment is based.[20] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

26. A carrier wishing to revise its subscriber count can do so by accessing Fee Filer after receiving its initial CMRS assessment letter. Providers should follow the prompts in Fee Filer to record their subscriber revisions, along with any supporting documentation.[21] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will attempt to contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse our initial disapproval of the provider's revised count submission, we expect the fee payment to be based on

[11] *FY 2009 Report and Order* at paras. 20 and 21.

[12] Therefore, it is important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES).

[13] Geostationary orbit space station (''GSO'') licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (i.e., were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[14] A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[15] *See FY 2009 Report and Order* at paras. 24, 26.

[16] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee), but it is not entered into the Commission's accounting system as a current debt.

[17] Those refinements include providing licensees with a Commission-authorized Web site where they can update or correct any information concerning their facilities, and amend their fee-exempt status, if need be. The notifications also provide licensees with a telephone number to call in the event that they need customer assistance.

[18] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* Report and Order, 25 FCC Rcd 9278 at para. 42 (2010) (''*FY 2010 Report and Order*'').

[19] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005).

[20] *Id.*

[21] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

the number of subscribers listed on the initial assessment letter. Once the timeframe for revision has passed, the subscriber counts are final and are the basis upon which CMRS regulatory fees are expected to be paid. Providers can also view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

27. Because some carriers do not file the NRUF report, they may not receive an initial assessment letter. In these instances, the carriers should compute their fee payment using the standard methodology [22] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2011), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

3. Submarine Cable Allocation

28. Because the dollar amount that the Commission is required to collect could differ from year to year, the revenue apportionment between submarine cable providers and terrestrial/satellite facilities needs to be re-calculated each year based on an 87.4/12.6 percent allocation, respectively.[23] Since FY 2009, the Commission has used the 87.4/12.6 percent allocation proposed in the Consensus Proposal as the percentage upon which to determine the regulatory fee revenue amounts for submarine cable providers and terrestrial/satellite facilities, respectively.[24] Each year, the Commission reserves the right to revise this 87.4/12.6 allocation. For FY 2012, we do not find any basis to alter this 87.4/12.6 percent revenue allocation.

*D. Streamlined Regulatory Fee Payment Process*

1. Cable Television Subscribers

29. The Commission will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to report cable subscriber counts on a per community unit identifier (''CUID'') basis.

2. CMRS Cellular and Mobile Providers

30. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[25] We will continue this practice in FY 2012. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2012, we will continue this practice of combining the CMRS cellular and CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers

31. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W worksheet to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner, thereby eliminating processing issues. For FY 2012, we will continue to round lines 14 and 16 when calculating the FY 2012 ITSP fee obligation. In addition, we will continue the practice of not mailing out Form 159–W via surface mail.

*E. Payment of Regulatory Fees*

1. Lock Box Bank

32. All lock box payments to the Commission for FY 2012 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://transition.fcc.gov/fees/regfees.html.*

2. Receiving Bank for Wire Payments

33. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html.*

3. De Minimis Regulatory Fees

34. Regulatees whose total FY 2012 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2012 regulatory fees.

4. Standard Fee Calculations and Payment Dates

35. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2011 for AM/FM radio stations, VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio

[22] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2011* at 1 (released September 2011).

[23] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 at n. 35 (2009) (''*Submarine Cable Order*'').

[24] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2009,* Report and Order, 24 FCC Rcd 10301 at para. 8 (2009) (''*FY 2009 Report and Order*'').

[25] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

bridging service providers are included in this category.[26]

• *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2011. The number of subscribers, units, or telephone numbers on December 31, 2011 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• The first eleven regulatory fee categories in our Schedule of Regulatory Fees (see Attachment B) pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2012.

• *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2011.[27] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2011. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date.

• *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2011. In instances where a license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

• *International Services: Terrestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2011 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for these purposes include backup and redundant circuits as of December 31, 2011. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2011, responsibility for payment rests with the holder of the permit or license as of the fee due date. For regulatory fee purposes, the allocation in FY 2012 will remain at 87.6 percent for submarine cable and 12.4 percent for satellite/terrestrial facilities.

*F. Enforcement*

36. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees.[28] Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules[29] and in the Debt Collection Improvement Act of 1996 (''DCIA'').[30] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[31] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

37. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[32] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

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[26] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) (''*InterCall Order*'').

[27] Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2011, rather than on a count as of December 31, 2011.

[28] 47 U.S.C. 159(c).

[29] *See* 47 CFR 1.1910.

[30] Delinquent debt owed to the Commission triggers application of the ''red light rule'' which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, subpart O, Collection of Claims Owed the United States.

[31] 47 CFR 1.1940(d).

[32] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

**TABLE – Reference to FY 2011 Schedule of Regulatory Fees**

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 40 |
| Microwave (per license) (47 CFR part 101) | 25 |
| 218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 65 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 50 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 20 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 20 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 10 |
| Aviation (Ground) (per license) (47 CFR part 87) | 15 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 1.42 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .17 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) | 310 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 310 |
| AM Radio Construction Permits | 490 |
| FM Radio Construction Permits | 675 |
| TV (47 CFR part 73) VHF Commercial | |
| Markets 1-10 | 84,625 |
| Markets 11-25 | 68,175 |
| Markets 26-50 | 40,475 |
| Markets 51-100 | 22,750 |
| Remaining Markets | 6,100 |

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| Construction Permits | 6,100 |
| TV (47 CFR part 73) UHF Commercial | |
| Markets 1-10 | 34,650 |
| Markets 11-25 | 32,950 |
| Markets 26-50 | 20,950 |
| Markets 51-100 | 12,325 |
| Remaining Markets | 3,275 |
| Construction Permits | 3,275 |
| Satellite Television Stations (All Markets) | 1,250 |
| Construction Permits – Satellite Television Stations | 670 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 395 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 370 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .93 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00375 |
| Earth Stations (47 CFR part 25) | 245 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 131,375 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 141,750 |
| International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit) | .35 |
| International Bearer Circuits - Submarine Cable | See Table Below |
| | |

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FY 2011 RADIO STATION REGULATORY FEES

| Population served | AM Class A | AM Class B | AM Class C | AM Class D | FM Classes A, B1 & C3 | FM Classes B, C, C0, C1 & C2 |
|---|---|---|---|---|---|---|
| <= 25,000 | $700 | $575 | $525 | $600 | $675 | $850 |
| 25,001–75,000 | 1,400 | 1,150 | 800 | 900 | 1,350 | 1,500 |
| 75,001–150,000 | 2,100 | 1,450 | 1,050 | 1,500 | 1,850 | 2,750 |
| 150,001–500,000 | 3,150 | 2,450 | 1,575 | 1,800 | 2,875 | 3,600 |
| 500,001–1,200,000 | 4,550 | 3,750 | 2,625 | 3,000 | 4,550 | 5,300 |
| 1,200,001–3,000,00 | 7,000 | 5,750 | 3,950 | 4,800 | 7,425 | 8,500 |
| >3,000,000 | 8,400 | 6,900 | 5,000 | 6,000 | 9,450 | 11,050 |

FY 2011 SCHEDULE OF REGULATORY FEES

[International Bearer Circuits—Submarine Cable]

| Submarine Cable Systems (capacity as of December 31, 2010) | Fee amount | Address |
|---|---|---|
| < 2.5 Gbps | $12,825 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 2.5 Gbps or greater, but less than 5 Gbps | 25,650 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 5 Gbps or greater, but less than 10 Gbps | 51,300 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 10 Gbps or greater, but less than 20 Gbps | 102,625 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |
| 20 Gbps or greater | 205,225 | FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000. |

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (''RFA''),[33] the Commission prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this *Notice of Proposed Rulemaking.* The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[34] In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.[35]

## VI. Need for, and Objectives of, the Notice

2. This rulemaking proceeding was initiated for the Commission to obtain comments regarding its proposed amendment to its Schedule of Regulatory Fees in the amount of $339,844,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

## VII. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[36]

[33] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[34] 5 U.S.C. 603(a).

[35] *Id.*

[36] 47 U.S.C. 154(i) and (j), 159, and 303(r).

## VIII. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. 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 proposed rules and policies, if adopted.[37] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[38] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[39] 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 SBA.[40]

5. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[41]

6. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations.[42] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[43]

7. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[44] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[45] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[46] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.''[47] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[48] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the

[37] 5 U.S.C. 603(b)(3).

[38] 5 U.S.C. 601(6).

[39] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[40] 15 U.S.C. 632.

[41] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://web.sba.gov/faqs* (accessed Jan. 2009).

[42] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[43] 5 U.S.C. 601(4).

[44] 5 U.S.C. 601(5).

[45] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, p. 272, Table 415.

[46] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[47] 15 U.S.C. 632.

[48] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (''Small Business Act''); 5 U.S.C. 601(3) (''RFA''). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[49] According to Commission data,[50] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

10. *Competitive Local Exchange Carriers (''CLECs''), Competitive Access Providers (''CAPs''), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[51] According to Commission data,[52] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[53] According to Commission data,[54] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[55] According to Commission data,[56] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

13. *Payphone Service Providers (''PSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[57] According to Commission data,[58] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

14. *Interexchange Carriers (''IXCs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[59] According to Commission data,[60] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

15. *Operator Service Providers (''OSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[61] According to Commission data,[62] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[63] According to Commission data,[64] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

17. *800 and 800-Like Service Subscribers.*[65] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[66] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[67] According to our data, at the end of December 2007, the number of 800

[49] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[50] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''*Trends in Telephone Service''* at Table 5.3, Page 5–5 (Aug. 2008) (''*Trends in Telephone Service''*). This source uses data that are current as of November 1, 2006.

[51] 13 CFR 121.201, NAICS code 517110.

[52] ''*Trends in Telephone Service*'' at Table 5.3.

[53] 13 CFR § 121.201, NAICS code 517310.

[54] ''Trends in Telephone Service'' at Table 5.3.

[55] 13 CFR 121.201, NAICS code 517310.

[56] ''*Trends in Telephone Service*'' at Table 5.3.

[57] 3 CFR 121.201, NAICS code 517110.

[58] ''*Trends in Telephone Service''* at Table 5.3.

[59] 13 CFR 121.201, NAICS code 517110.

[60] ''*Trends in Telephone Service''* at Table 5.3.

[61] 13 CFR 121.201, NAICS code 517110.

[62] ''*Trends in Telephone Service*'' at Table 5.3.

[63] 13 CFR 121.201, NAICS code 517310.

[64] ''*Trends in Telephone Service*'' at Table 5.3.

[65] We include all toll-free number subscribers in this category.

[66] 13 CFR 121.201, NAICS code 517310.

[67] ''*Trends in Telephone Service*'' at Tables 18.4, 18.5, 18.6, and 18.7.

numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

18. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[68] The second has a size standard of $25 million or less in annual receipts.[69] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[70]

19. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [71] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[72] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[73] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category of All Other Telecommunications comprises, inter alia, ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.'' [74] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[75] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[76] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[77] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [78] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[79] For the category of Wireless Telecommunications Carriers (except Satellite), preliminary data for 2007 show that there was 11,927 firms operating that year.[80] While the Census Bureau has not released data on the establishments broken down by number of employees, we note that the Census Bureau lists total employment for all firms in that sector at 281,262.[81] Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

22. *Auctions.* Initially, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [82] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[83] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [84] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[85] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[86] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or

[68] 13 CFR 121.201, NAICS code 517410.

[69] 13 CFR 121.201, NAICS code 517919.

[70] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[71] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications''; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[72] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517410 (issued Nov. 2005).

[73] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[74] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 All Other Telecommunications''; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[75] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517910 (issued Nov. 2005).

[76] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[77] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[78] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[79] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[80] U.S. Census Bureau, 2007 Economic Census, Sector 51, EC075111 Information: Industry Series: Preliminary Summary Statistics for the United States: 2007, NAICS code 517210 (issued Oct. 20, 2009), *factfinder.census.gov/servlet/IBQTable?-fds_name=EC0700A1&-_clearIBQ=Y&-ds_name=EC075111&-NAICS2007=51721* (visited Mar. 2, 2011).

[81] *Id.*

[82] 13 CFR 121.201, NAICS code 517212.

[83] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[84] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[85] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[86] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

more.[87] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[88] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[89] Thus, we estimate that the majority of wireless firms are small.

24. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[90] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[91] The SBA has approved this definition.[92] An initial auction of Metropolitan Economic Area (''MEA'') licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[93] Fifty-seven companies claiming small business status won 440 licenses.[94] A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[95] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[96]

25. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of ''paging and messaging'' services.[97] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[98] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

26. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[99] The SBA approved these definitions.[100] The Commission conducted an auction of geographic area licenses in the WCS service in 1997. In the auction, seven bidders that qualified as very small business entities won licenses, and one bidder that qualified as a small business entity won a license.

27. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.[101] An auction for one license in the 1670–1675 MHz band was conducted in 2003. The winning bidder was not a small entity.

28. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[102] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[103] According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony.[104] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[105] Therefore, more than half of these entities can be considered small.

29. *Broadband Personal Communications Service.* The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous years.[106] For Block F licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three years.[107] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[108] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C Block auctions.[109] A total of 93 bidders that claimed ''small'' and ''very small'' business status won licenses in the first auction of the D, E, and F Blocks.[110] In 1999, the Commission completed a subsequent auction of C, D, E, and F Block licenses.[111] Of the 57 winning bidders

[87] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[88] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[89] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[90] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (''*Paging Second Report and Order*''); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[91] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[92] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (''WTB''), FCC (Dec. 2, 1998) (''*Alvarez Letter 1998*'').

[93] *See* ''*929 and 931 MHz Paging Auction Closes,*'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[94] *See id.*

[95] *See* ''*Lower and Upper Paging Band Auction Closes,*'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[96] *See* ''*Lower and Upper Paging Bands Auction Closes,*'' Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[97] ''*Trends in Telephone Service*'' at Table 5.3.

[98] *Id.*

[99] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[100] *See Alvarez Letter 1998.*

[101] 47 CFR 2.106; *see generally* 47 CFR 27.1–.70.

[102] 13 CFR 121.201, NAICS code 517210.

[103] *Id.*

[104] ''*Trends in Telephone Service*'' at Table 5.3.

[105] *Id.*

[106] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap *et al., Report and Order,* 11 FCC Rcd 7824, 7850–52, paras. 57–60 (1996) (''*PCS Report and Order*''); *see also* 47 CFR 24.720(b).

[107] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[108] *See Alvarez Letter 1998.*

[109] *See* Entrepreneurs' C Block Auction Closes, *Public Notice,* DA 96–716 (1996); Entrepreneurs C Block Reauction Closes, *Public Notice,* DA 96–1153 (1996).

[110] *See* Broadband PCS, D, E and F Block Auction Closes, *Public Notice,* Doc. No. 89838 (released Jan. 14, 1997).

[111] *See* C, D, E, and F Block Broadband PCS Auction Closes, *Public Notice,* 14 FCC Rcd 6688 (1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, *Fourth Report and Order,* 13 FCC Rcd 15,743, 15,768 para. 46 (1998).

in that auction, 48 claimed small business status and won 277 licenses.[112]

30. In 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses (Auction 35). Of the 35 winning bidders in that auction, 29 claimed small or very small businesses status.[113] Subsequent events concerning that Auction, including judicial and agency determinations, resulted in only a portion of those C and F Block licenses being available for grant. The Commission completed an auction of 188 C Block licenses and 21 F Block licenses in 2005. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[114] In 2007, the Commission completed an auction of licenses in the A, C, and F Blocks.[115] Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.[116] Most recently, in 2008, the Commission completed the auction of C, D, E, and F Block Broadband PCS licenses.[117] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[118]

31. *Advanced Wireless Services.* In 2006, the Commission conducted its first auction of Advanced Wireless Services licenses in the 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''), designated as Auction 66.[119] For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[120] In Auction 66, 31 winning bidders identified themselves as very small businesses and won 142 licenses.[121] Twenty-six of the winning bidders identified themselves as small businesses and won 73 licenses.[122] In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses.[123] Four winning bidders identifying themselves as very small businesses won 17 licenses, and three winning bidders identifying themselves as a small business won five AWS–1 licenses.[124]

32. *Narrowband Personal Communications Services.* In 1994, the Commission conducted two auctions of Narrowband PCS licenses. For these auctions, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million.[125] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[126] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[127] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[128] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[129] The SBA has approved these small business size standards.[130] A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[131] Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

33. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[132] The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[133] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[134] Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[135] The SBA approved these small size standards.[136] An auction of 740 licenses was conducted in 2002 (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of

[112] *See* C, D, E, and F Block Broadband PCS Auction Closes, *Public Notice,* 14 FCC Rcd 6688 (1999).

[113] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 2339 (2001).

[114] *See* ''Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,'' *Public Notice,* 20 FCC Rcd 3703 (2005).

[115] *See* ''Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71,'' *Public Notice,* 22 FCC Rcd 9247 (2007).

[116] *Id.*

[117] *See* Auction of AWS–1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78, *Public Notice,* 23 FCC Rcd 12,749 (2008).

[118] *Id.*

[119] *See* Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, AU Docket No. 06–30, *Public Notice,* 21 FCC Rcd 4562 (2006) (''*Auction 66 Procedures Public Notice''*).

[120] *See* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order,* 18 FCC Rcd 25,162, App. B (2003), *modified by* Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration,* 20 FCC Rcd 14,058, App. C (2005).

[121] *See* Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66, *Public Notice,* 21 FCC Rcd 10,521 (2006) (''*Auction 66 Closing Public Notice''*)

[122] *See id.*

[123] *See AWS–1 and Broadband PCS Procedures Public Notice,* 23 FCC Rcd at 7499. Auction 78 also included an auction of broadband PCS licenses.

[124] *See* ''Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period'', *Public Notice,* 23 FCC Rcd 12749–65 (2008).

[125] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[126] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (released Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (released Nov. 9, 1994).

[127] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) (''*Narrowband PCS Second Report and Order''*).

[128] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[129] *Id.*

[130] *See Alvarez Letter 1998.*

[131] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[132] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) (''*Channels 52–59 Report and Order''*).

[133] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[134] *See id.*

[135] *See id,* 17 FCC Rcd at 1088, para. 173.

[136] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) (''*Alvarez Letter 1999''*).

329 licenses.[137] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses.[138] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[139] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). All three winning bidders claimed small business status.

34. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.*[140] An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008.[141] Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

35. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses.[142] In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available.[143] Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

36. *700 MHz Guard Band Licenses.* In 2000, the Commission adopted the *700 MHz Guard Band Report and Order,* in which it established rules for the A and B block licenses in the Upper 700 MHz band, including size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits.[144] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[145] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[146] SBA approval of these definitions is not required.[147] An auction of these licenses was conducted in 2000.[148] Of the 104 licenses auctioned, 96 licenses were won by nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses was held in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business.[149]

37. *Specialized Mobile Radio.* The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[150] The Commission defined a ''very small business'' as an entity that together with its affiliates and controlling principals, has average gross revenues not exceeding $3 million for the preceding three years.[151] The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service.[152] The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses.[153] The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the $15 million size standard won 38 licenses for the upper 200 channels.[154] A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[155]

38. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses.[156] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[157] Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all three auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

39. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz

[137] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[138] *See* Lower 700 MHz Band Auction Closes, *Public Notice,* 18 FCC Rcd 11,873 (WTB 2003).

[139] *See id.*

[140] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, 22 FCC Rcd 15289 (2007) (''*700 MHz Second Report and Order*'').

[141] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (WTB 2008).

[142] *700 MHz Second Report and Order,* 22 FCC Rcd 15,289.

[143] *See* Auction of 700 MHz Band Licenses Closes, *Public Notice,* 23 FCC Rcd 4572 (2008).

[144] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) (''*700 MHz Guard Band Report and Order*'').

[145] *See 700 MHz Guard Band Report and Order,* 15 FCC Rcd at 5343, para. 108.

[146] *See id.*

[147] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[148] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[149] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[150] 47 CFR 90.810, 90.814(b), 90.912.

[151] 47 CFR 90.810, 90.814(b), 90.912.

[152] *See Alvarez Letter 1999.*

[153] *See* 900 MHz Specialized Mobile Radio Service Spectrum Auction Closes: Winning Bidders Announced,'' *Public Notice,* 19 FCC Rcd. 3921 (WTB 2004).

[154] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[155] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[156] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[157] *See,* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees.[158] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

40. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[159] This category provides that a small business is a wireless company employing no more than 1,500 persons.[160] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

41. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service licenses are assigned by auction, where mutually exclusive applications are accepted. In the *220 MHz Third Report and Order,* the Commission adopted small business size standards for defining ''small'' and ''very small'' businesses for the purpose of determining their eligibility for special provisions such as bidding credits, which are discounts on a winning bids.[161] that the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[162] The Commission defined a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[163] The SBA has approved these small size standards.[164] The first auction of Phase II licenses was conducted in 1998.[165] In that auction, 908 licenses were offered in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (''EAG'') Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[166] Thirty-nine small or very small businesses won 373 licenses in the first 220 MHz auction. A second auction in 1999 offered 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming very small business status won 158 licenses.[167] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[168] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses, designated as Auction 72.[169] Auction 72 offered 94 Phase II 220 MHz Service licenses.[170] In this auction, five winning bidders won a total of 76 licenses.[171] Two winning bidders that identified themselves as very small businesses won 56 of the 76 licenses. One winning bidder that identified itself as a small business won 5 licenses.

42. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[172] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[173]

43. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

44. *Fixed Microwave Services.* Fixed microwave services include common carrier,[174] private operational-fixed,[175] and broadcast auxiliary radio services.[176] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed

[158] *See generally* 13 CFR 121.201, NAICS code 517210.

[159] *Id.*

[160] *Id.*

[161] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[162] *Id.* at 11068, para. 291.

[163] *Id.*

[164] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) (''*Alvarez to Phythyon Letter 1998*'').

[165] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (1998).

[166] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (1999).

[167] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (1999).

[168] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (2002).

[169] *See* ''Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[170] *Id.*

[171] *See* ''Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *Public Notice,* 22 FCC Rcd 11573 (2007).

[172] *See* 13 CFR 121.201, NAICS code 517210.

[173] *See generally* 13 CFR 121.201.

[174] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[175] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[176] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[177] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

45. *39 GHz Service.* The Commission adopted small business size standards for 39 GHz licenses. A ''small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million in the preceding three years.[178] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues of not more than $15 million for the preceding three years.[179] The SBA has approved these small business size standards.[180] In 2000, the Commission conducted an auction of 2,173, 39 GHz licenses. A total of 18 bidders who claimed small or very small business status won 849 licenses.

46. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[181] The Commission established small business size standards for LMDS licenses. It defined a ''small business'' as an entity that has average gross revenues of not more than $40 million in the three preceding years and defined a ''very small business'' as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the three preceding years.[182] The SBA approved these small business size standards for auctions of LMDS licenses.[183] In 1998, an auction of 986 LMDS licenses was conducted. A total of 93 winning bidders that qualified as small or very small businesses won approximately 664 licenses. In 1999, the Commission conducted an auction of 161 LMDS licenses. and in this auction, 32 small and very small businesses won 119 licenses.

47. *218–219 MHz Service.* The first auction of 218–219 MHz Service (previously referred to as the Interactive and Video Data Service or IVDS) licenses resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (''MSAs'').[184] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[185] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission revised its small business size standards for the 218–219 MHz Service and defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[186] The Commission defined a very small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[187] The SBA has approved these definitions.[188]

48. *Location and Monitoring Service (''LMS'').* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For auctions of LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[189] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[190] These definitions have been approved by the SBA.[191] An auction of LMS licenses was conducted in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

49. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[192] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS'').[193] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[194] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by our action.

50. *Air-Ground Radiotelephone Service.*[195] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[196] There are approximately 100

[177] 13 CFR 121.201, NAICS code 517210.

[178] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[179] *Id.*

[180] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[181] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) (''*LMDS Second Report and Order*'').

[182] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[183] *See Alvarez to Phythyon Letter 1998.*

[184] *See ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,''* Public Notice, 9 FCC Rcd 6227 (1994).

[185] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[186] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[187] *Id.*

[188] *See Alvarez to Phythyon Letter 1998.*

[189] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) (''*Automatic Vehicle Monitoring Systems Second Report and Order*''); *see also* 47 CFR 90.1103.

[190] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[191] *See Alvarez Letter 1998.*

[192] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[193] BETRS is defined in 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[194] 13 CFR 121.201, NAICS code 517210.

[195] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[196] 13 CFR 121.201, NAICS codes 517210.

licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[197] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[198] These definitions were approved by the SBA.[199] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). The auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

51. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[200] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[201] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[202] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For VHF Public Coast licenses, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not exceeding $15 million dollars. In addition, it defined a ''very small'' business as one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not exceeding $3 million dollars.[203] The Commission also made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[204] Winning bidders could claim status as a very small business or a very small business. For AMTS, the Commission defined a very small business as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and defined a small business as an entity with attributed average annual gross revenues not exceeding $15 million for the preceding three years.[205] Three of the winning bidders in Auction 57 qualified as small or very small businesses, and three winning bidders in Auction 61 qualified as very small businesses.

52. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (''UHF'') television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[206] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[207] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[208]

53. *Multiple Address Systems (''MAS'').* Entities using MAS spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. The Commission defines a small business for MAS licenses as an entity that has average gross revenues of less than $15 million in the preceding three calendar years.[209] A very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[210] The SBA has approved these definitions.[211] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In 2001, an auction of 5,104 MAS licenses in 176 EAs was conducted in 2001.[212] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

54. With respect to entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be

[197] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28 through 42 (2005).

[198] *Id.*

[199] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[200] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of Parts 80 and 87 of the Commission's Rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

[201] 13 CFR 121.201, NAICS code 517210.

[202] A licensee may have a license in more than one category.

[203] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[204] *See ''Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,''* Public Notice, 19 FCC Rcd 9518 (WTB 2004); *''Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction* No. 61,'' Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[205] 47 CFR 80.1252.

[206] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[207] 13 CFR 121.201, NAICS code 517210.

[208] *Id.*

[209] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[210] *Id.*

[211] *See Alvarez Letter 1999.*

[212] *See ''Multiple Address Systems Spectrum Auction Closes,''* Public Notice, 16 FCC Rcd 21011 (2001).

that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[213] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

55. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands, and in the unpaired 1390–1392 MHz band in 2007.[214] For these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, had average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[215] Neither of the two winning bidders claimed small business status.[216]

56. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[217] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [218] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity.

57. *Future 24 GHz Licensees.* With respect to new applicants for licenses in the 24 GHz band, for the purpose of determining eligibility for bidding credits, the Commission established three small business definitions. An ''entrepreneur'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $40 million.[219] A ''small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[220] A ''very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[221] The SBA has approved these definitions.[222] In a 2004 auction of 24 GHz licenses, three winning bidders won seven licenses. Two of the winning bidders were very small businesses that won five licenses.

58. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')).[223] Some BRS systems, known as ''wireless cable'', transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a size standard that defined a ''small business'' as an entity that had annual average gross revenues of no more than $40 million in the preceding three years.[224] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 winning bidders, 61 met the definition of a small business. At this time, we estimate that of the 61 small businesses that won BRS licenses in the 1996 auction, 48 remain small business licensees. BRS also includes licensees of stations authorized prior to the 1996 auction. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[225] In 2008, the Commission adopted three small business definitions for BRS, for the purpose of determining eligibility for bidding credits. A ''small business'' is defined as an entity with attributed average annual gross revenues that do not exceed $40 million for the preceding three years. A ''very small business'' is defined as an entity with attributed average annual gross revenues that do not exceed $15 million for the preceding three years. An ''entrepreneur'' is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years.[226] In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses.[227] Auction 86 concluded with the sale of 61 licenses.[228] Of the ten winning bidders, three bidders that claimed small business status won 7 licenses, and two bidders that claimed entrepreneur status won six licenses. After adding the number of small businesses that won licenses in the Commission's BRS auctions to the approximately 392 incumbent BRS licensees who are considered small entities, we estimate that there are currently approximately 445 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

59. *Television Broadcasting.* This Economic Census category ''comprises

[213] *See* 13 CFR 121.201, NAICS code 517210.

[214] *See* ''*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*'' Public Notice, 21 FCC Rcd 12393 (WTB 2006); ''*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*'' Public Notice, 22 FCC Rcd 4714 (2007) (''*Auction No. 69 Closing PN*'').

[215] *Auction No. 69 Closing PN,* Attachment C.

[216] *See Auction No. 69 Closing PN.*

[217] 13 CFR 121.201, NAICS code 517210.

[218] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[219] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967 para. 77 (2000) (''*24 GHz Report and Order*''); *see also* 47 CFR 101.538(a)(3).

[220] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(2).

[221] *24 GHz Report and Order,* 15 FCC Rcd at 16967 para. 77; *see also* 47 CFR 101.538(a)(1).

[222] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

[223] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) (''*MDS Auction R&O*'').

[224] 47 CFR 21.961(b)(1).

[225] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[226] *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* WT Docket No. 03–66, Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5992, 6007 para. 28 (2008) (''*BRS/EBS 4th MO&O & 2nd FNPRM*'').

[227] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice,* 24 FCC Rcd 8277 (2009).

[228] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice,* 24 FCC Rcd 13572 (2009).

establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [229] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[230] The Commission has estimated the number of licensed commercial television stations to be 1,387.[231] In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[232] We therefore estimate that the majority of commercial television broadcasters are small entities.

60. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [233] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

61. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.[234] These stations are non-profit, and therefore considered to be small entities.[235]

62. In addition, there are also 2,528 low power television stations, including Class A stations (LPTV).[236] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

63. *Radio Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [237] The SBA has established a small business size standard for this category, which is: Such firms having $7 million or less in annual receipts.[238] According to Commission staff review of BIA Advisory Services, LLC's *Media Access Pro Radio Database* on March 28, 2012, about 10,759 (97%) of 11,102 commercial radio stations had revenues of $7 million or less. Therefore, the majority of such entities are small entities.

64. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[239] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[240] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

65. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[241]

66. The Commission estimates that there are approximately 6,099 FM translators and boosters.[242] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated. [243]

67. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [244] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[245] According to Census Bureau

[229] U.S. Census Bureau, 2007 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[230] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2010).

[231] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[232] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[233] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[234] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[235] *See generally* 5 U.S.C. 601(4), (6).

[236] *See FCC News Release,* ''Broadcast Station Totals as of December 31, 2011,'' dated January 6, 2012; *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0106/DOC-311837A1.pdf.*

[237] U.S. Census Bureau, 2007 NAICS Definitions, ''515112 Radio Stations''; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[238] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2010).

[239] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[240] 13 CFR 121.102(b) (an SBA regulation).

[241] 13 CFR 121.201, NAICS codes 515112 and 515120.

[242] *See supra* note 294.

[243] *See* 15 U.S.C. 632.

[244] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[245] 13 CFR 121.201, NAICS code 517110.

data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[246] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[247] Thus, the majority of these firms can be considered small.

68. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[248] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[249] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[250] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[251] Thus, under this second size standard, most cable systems are small.

69. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [252] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[253] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[254] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[255] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

70. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[256] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[257] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [258] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[259] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[260] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[261] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[262] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[263] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

71. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [264] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts.[265] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that

[246] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[247] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[248] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[249] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook* 2006, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[250] 47 CFR 76.901(c).

[251] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[252] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[253] 47 CFR 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[254] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[255] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[256] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) (''*Thirteenth Annual Cable Competition Report*'').

[257] *See* 47 U.S.C. 573.

[258] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[259] 13 CFR 121.201, NAICS code 517110.

[260] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[261] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[262] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[263] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[264] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[265] 13 CFR 121.201, NAICS code 517110.

operated for the entire year.[266] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[267] Thus, the majority of these firms can be considered small.

72. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defines a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[268] These definitions were approved by the SBA.[269] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[270] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[271]

73. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

74. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[272] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For VHF Public Coast licenses, the Commission defines a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is defined as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million.[273] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

75. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[274] These services include Citizen Band Radio Service (''CB''), General Mobile Radio Service (''GMRS''), Radio Control Radio Service (''R/C''), Family Radio Service (''FRS''), Wireless Medical Telemetry Service (''WMTS''), Medical Implant Communications Service (''MICS''), Low Power Radio Service (''LPRS''), and Multi-Use Radio Service (''MURS'').[275] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons.[276] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by our action.

76. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[277]

[266] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[267] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[268] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band,* ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[269] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

[270] *See* ''*Multichannel Video Distribution and Data Service Auction Closes,*'' Public Notice, 19 FCC Rcd 1834 (2004).

[271] *See* ''*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,*'' Public Notice, 20 FCC Rcd 19807 (2005).

[272] 13 CFR 121.201, NAICS code 517210.

[273] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[274] 47 CFR Part 90.

[275] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[276] 13 CFR 121.201, NAICS Code 517210.

[277] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for

Continued

There are a total of approximately 127,540 licensees in these services. Governmental entities [278] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[279]

77. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[280] which has an SBA small business size standard of 1,500 or fewer employees.[281] The latter are within the category of All Other Telecommunications,[282] which has a size standard of annual receipts of $25 million or less.[283] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[284] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[285] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[286] Consequently, we estimate that the majority of ISP firms are small entities.

78. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

79. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

## IX. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

80. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, and pay a regulatory fee based on the number of licenses or call signs.[287] In some instances, licensees may decide to submit an FCC Form 159 Remittance Advice. Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to submit a regulatory fee payment, and it can be completed by the employees responsible for an entity's business records.

81. As discussed previously in this *Notice of Proposed Rulemaking,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and the Commission will be able to create an electronic record of licensee payment attributes that are more easily traceable than payments that were previously mailed in with a hardcopy Form 159.

82. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[288] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[289] Further, in accordance with the DCIA, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[290] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or

emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[278] 47 CFR 1.1162.

[279] 5 U.S.C. 601(5).

[280] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'', *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[281] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[282] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 All Other Telecommunications''; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[283] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[284] U.S. Census Bureau, ''2002 NAICS Definitions, ''518111 Internet Service Providers''; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[285] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 518111 (issued Nov. 2005).

[286] An additional 45 firms had receipts of $25 million or more.

[287] See 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[288] 47 CFR 1.1164.

[289] 47 CFR 1.1164(c).

[290] Public Law 104–134, 110 Stat. 1321 (1996).

entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[291]

83. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[292] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

## X. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[293] In this *NPRM,* we seek comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

85. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

[291] 31 U.S.C. 7701(c)(2)(B).

[292] 47 CFR 1.1166.

[293] 5 U.S.C. 603.

## XI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

## XII. Ordering Clauses

38. Accordingly, *it is ordered* that, pursuant to Sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Notice of Proposed Rulemaking is hereby adopted.*

39. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–11890 Filed 5–16–12; 8:45 am]

BILLING CODE 6712–01–P

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

**[FAR Case 2011–019; Docket 2011–0019; Sequence 1]**

**RIN 9000–AM23**

# Federal Acquisition Regulation; Updated Postretirement Benefit (PRB) References

**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 remove references to specific paragraphs in an accounting standard that were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP). The immediate and delayed recognition procedures for the initial application transition obligation in paragraphs 111, 112, and 113, respectively, of superseded Financial Accounting Standard (FAS) 106, are obsolete and no longer exist in the authoritative GAAP (the ASC). DoD, GSA, and NASA, therefore, propose replacing the current references with replacement criteria for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for postretirement benefits (PRBs) to an accrual method of accounting for the purposes of government contract cost accounting.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before July 16, 2012 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2011–019 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''FAR Case 2011–019''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2011–019.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2011–019'' 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 2011–019, 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 N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2011–019.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In June of 2009, the FASB announced, in its Statement Number 168, that effective for financial statements issued for interim and annual periods ending after September 15, 2009, the FASB ASC would become the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The FASB stated that this codification in the ASC supersedes existing references in U.S. GAAP.

On February 16, 2011, DoD, GSA, and NASA issued a proposed rule under FAR Case 2010–005, published in the **Federal Register** at 76 FR 8989, which replaced the superseded GAAP references for three sections of the FAR, and also stated that the reference to ''prior GAAP'' in FAR 31.205–6(o)(2)(iii)(A)(*1*) would be handled in a separate case. This proposed rule is the separate case, FAR Case 2011–019.

The superseded GAAP provisions in FAR 31.205–6(o)(2)(iii)(A)(*1*) reference the description of ''transition obligation'' in paragraph 110 of FAS 106 and the ''delayed recognition methodology'' in paragraphs 112 and 113, also of FAS 106.

These references to FAS 106 in the cost principle were added in FAR Case 91–42, published in the **Federal Register** at 56 FR 41738 on August 22, 1991. At the time, DoD, GSA, and NASA decided not to allow contractors to claim the entire ''transition obligation'' associated with their initial application of FAS 106 as an allowable cost in accordance with the ''immediate recognition'' procedure (superseded paragraph 111) in FAS 106. (The transition obligation associated with initial application of FAS 106 is referred to hereafter as the ''initial application transition obligation.'') Therefore, DoD, GSA, and NASA disallowed costs for the amortization of the initial application transition obligation in excess of the amount amortized using the delayed recognition method procedure in paragraphs 112 and 113 of FAS 106.

DoD, GSA, and NASA note that the immediate and delayed recognition procedures for the initial application transition obligation in paragraphs 111, 112, and 113, respectively, of superseded FAS 106, are obsolete because FAS 106 no longer exists in the authoritative GAAP (the ASC). When the FASB recodified FAS 106 into the ASC, paragraphs 111 through 114 were not included because public companies recognized the transition obligation in the first fiscal period beginning after December 15, 1994, or shortly thereafter if exempted from the initial effective date. While the existing provision at FAR 31.205–6(o)(2)(iii)(A)(*1*) remains in force because the referenced paragraphs can be found in the historical accounting literature, the passage of time raises concerns that these paragraphs may become less readily available. DoD, GSA, and NASA conclude, therefore, that replacement criteria are needed for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for PRBs to an accrual method of accounting for the purposes of government contract cost accounting.

DoD, GSA, and NASA propose replacing the current reference to the recognition of the transition method in accordance with provisions of GAAP that no longer exist with explicit criteria that generally replicates the former GAAP methodology.

DoD, GSA, and NASA acknowledge that contractors have in the past and may continue to propose a change to their government contract cost accounting practice whereby the ''pay-as-you-go'' method is replaced by the ''accrual'' method and this may give rise to a transition obligation that is similar in its nature, but not its amount, to the initial application transition obligation that arose when (now superseded) FAS 106 first became applicable in the early 1990's for financial reporting purposes.

Consequently, DoD, GSA, and NASA are removing the obsolete references to paragraphs 110, 112, and 113 in FAR 31.205–6(o)(2)(iii)(A)(*1*). The revision is intended to allow a general continuation of the obsolete GAAP delayed recognition method for contractors that move from a pay-as-you-go method of accounting to an accrual basis of accounting for PRB costs for government contract cost accounting.

## II. 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.

## III. Regulatory Flexibility Act

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) do not expect this proposed 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.,* because the rule only removes references to specific paragraphs in an accounting standard that were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP) and replaces these references with explicit criteria that generally replicates the former GAAP methodology. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. 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 proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2011–019) in correspondence.

## IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 14, 2012.

**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 part 31 as set forth below:

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–6 by revising the introductory text of paragraph (o)(2)(iii)(A) and paragraph (o)(2)(iii)(A)(*1*) to read as follows:

### 31.205–6 Compensation for personal services.

* * * * *

(o) * * *

(2) * * *

(iii) * * *

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(*1*) or (o)(2)(iii)(A)(*2*) of this subsection:

(*1*) Generally accepted accounting principles. However, transitions from the pay-as-you-go method to the accrual

accounting method must be handled according to paragraphs (o)(2)(iii)(A)(*1*)(*i*) through (*iii*) of this section:

(*i*) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (E) of this section; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(*ii*) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(*iii*) For a plan that transitioned from pay-as-you-go to accrual accounting for government contract cost accounting prior to (Date of Final Rule), the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

* * * * *

[FR Doc. 2012–11959 Filed 5–16–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 219

**[Docket No. FRA–2010–0155]**

**RIN 2130–AC24**

## Control of Alcohol and Drug Use: Addition of Post-Accident Toxicological Testing for Non-Controlled Substances

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT)

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

**SUMMARY:** Since 1985, FRA has conducted post-accident toxicological testing (post-accident testing) on blood, urine, and, if an employee is deceased, tissue samples from railroad employees involved in serious train accidents. If an accident qualifies for post-accident testing, FRA routinely conducts tests for alcohol, marijuana, cocaine, phencyclidine (PCP), and certain amphetamines, opiates, barbiturates, and benzodiazepines. FRA is proposing to add certain potentially impairing non-controlled substances to its standard post-accident testing panel because FRA's research indicates that use of prescription and over-the-counter (OTC) drugs, most of which are non-controlled substances, is prevalent among railroad employees.

**DATES:** Submit comments on or before July 16, 2012.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA–2010–0155 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted comments or materials.

**FOR FURTHER INFORMATION CONTACT:** For program and technical issues, contact Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6313), *lamar.allen@dot.gov.* For legal issues, contact Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Mail Stop 10, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6060), *patricia.sun@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Since 1985, as part of its accident investigation program, FRA has conducted post-accident alcohol and drug tests on railroad employees who have been involved in serious train accidents (50 FR 31508, August 2, 1985). If an accident meets FRA's criteria for post-accident testing (*see* 49 CFR 219.201), FRA conducts tests for alcohol and for certain drugs classified as controlled substances under the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention Substances Act of 1970 (CSA, 21 U.S.C. 801 et seq.). Controlled substances are drugs or chemicals that are prohibited or strictly regulated because of their potential for abuse or addiction. The Drug Enforcement Administration (DEA), which is primarily responsible for enforcing the CSA, oversees the classification of controlled substances into five schedules. Schedule I contains illicit drugs, such as marijuana and heroin, which have no legitimate medical use under Federal law. Schedules II–V contain legal drugs which are available only by prescription because of their potential for abuse. Currently, FRA routinely conducts post-accident tests for the following drugs: marijuana, cocaine, phencyclidine (PCP), and certain opiates, amphetamines, barbiturates, and benzodiazepines.

As detailed below, FRA research indicates that prescription and OTC drug use has become prevalent among railroad employees. For this reason FRA is proposing to add certain non-controlled substances to its standard post-accident testing program, which currently routinely tests only for alcohol and controlled substances. At this time, FRA intends to add two types of non-controlled substances, tramadol (a synthetic opioid) and sedating antihistamines. Publication of this NPRM, however, in no way limits FRA's post-accident testing to the identified substances or in any way restricts FRA's ability to make routine amendments to its standard post-accident testing panel without prior notice. Furthermore, in addition to its standard post-accident testing panel, FRA always has the ability to test for ''other impairing substances specified by FRA as necessary to the particular accident investigation.'' *See* 49 CFR 219.211(a). This flexibility is essential, since it allows FRA to conduct post-accident tests for any substance (e.g., carbon

monoxide) that its preliminary investigation shows may have played a role in an accident.

FRA is proposing to add tests for certain non-controlled substances to respond to the significant rise in prescription and OTC drug use in the more than 25 years since FRA began post-accident testing. In 2006, an ongoing telephone survey about the use of medications by U.S. adults found that 82 percent took at least one prescription or OTC drug, dietary supplement, or herbal remedy, each week. *See Slone Epidemiology Center at Boston University, Patterns of Medications Use in the United States (2006).* Also in 2006, a study commissioned by the National Community Pharmacists Association (NCPA) found that up to 75 percent of Americans reported not always taking their prescription medication as directed, 49 percent reported forgetting to take a prescribed medication, 31 percent reported not filling a prescription, 29 percent reported stopping use of a medication before its supply ran out, and 24 percent reported taking less than the recommended dosage. *See National Community Pharmacists Association, Take as Directed: A Prescription Not Followed (2006).* Today, the Physician's Desk Reference contains over 13,000 prescription drugs, most of which are non-controlled substances.

In 1998, FRA first expressed concerns that § 219.103, which addresses the use of Schedule II–V controlled substances by safety-sensitive employees, may be too narrow to cover the use of prescription and OTC drugs since most of these drugs are not controlled substances. To supplement § 219.103, FRA issued Safety Advisory 98–3 (Advisory), *Recommended practices for the safe use of prescription and over-the-counter drugs by safety-sensitive railroad employees,* which made recommendations to railroads on how to handle prescription and OTC drug use by their safety-sensitive employees. *See* 63 FR 71334, December 24, 1998.

After issuing this Advisory, FRA initiated two projects to research whether the prevalence of prescription drugs should be more closely evaluated and monitored as a possible safety concern in the rail industry. As detailed below, both projects found that prescription and OTC drug use was prevalent among railroad employees involved in reportable accidents.

In the first project, which lasted from April 2002 to April 2009, FRA asked railroad employees who had been involved in human-factor accidents that were reportable under FRA's accident reporting regulations at 49 CFR part 225 to complete FRA surveys on their recent prescription and OTC drug use. Of the 294 human-factor accidents surveyed, only 20 percent had no employee self-reports of drug use (this 20 percent also included accidents where employees would not complete questionnaires or could not be located). In the 80 percent of surveyed accidents where prescription or OTC drug use, or both, had been self-reported, employees listed a wide variety of generic and brand name drugs, with many employees listing multiple prescription and OTC drugs, as well as dietary supplements and herbal preparations.

In 2005, FRA began a second research project that partially responded to one in a series of recommendations to FRA made by the National Transportation Safety Board (NTSB) concerning the use of prescription and OTC drugs by safety-sensitive employees. (The NTSB made similar recommendations to DOT and other DOT agencies.)

> R–00–004: Establish in coordination with the U.S. Department of Transportation, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, and the U.S. Coast Guard, comprehensive toxicological testing requirements for an appropriate sample of fatal highway, railroad, transit, and marine accidents to ensure the identification of the role played by common prescription and over-the-counter medications. Review and analyze the results of such testing at intervals not to exceed 5 years.

In this project, FRA re-tested a sample of 150 frozen post-accident testing urine specimens that had previously been reported as negative for the substances in the agency's standard post-accident drug testing panel. After redacting any identifying employee information, FRA used a commercially available medical professional drug testing panel to re-test these specimens for commonly used prescription and OTC drugs with known risks of adverse side effects, such as pain relievers, anti-depressants, and sedating antihistamines. Of the 150 re-tested samples, 14 (9.3 percent) tested positive for at least one potentially impairing prescription or OTC drug. These post-accident re-testing results confirmed those of FRA's human-factor accident survey, by also showing that prescription and OTC drug use was prevalent among railroad employees.

**Proposed Addition of Tests for Non-Controlled Substances**

Because FRA's post-accident testing program predates both DOT's testing procedures (49 CFR part 40) and the Omnibus Transportation Employee Testing Act of 1991, neither part 40 nor Department of Health and Human Services (HHS) guidelines apply to post-accident testing procedures and protocols. *See* 49 CFR 40.1. All post-accident tests are conducted on behalf of FRA by a single laboratory (FRA is revising appendix B to 49 CFR Part 219 to designate Quest Diagnostics as its post-accident testing laboratory) in accordance with FRA specifications. FRA conducts compliance and quality audits of the laboratory each quarter.

As explained above, FRA intends to add testing for two types of non-controlled substances (tramadol (a synthetic opioid) and sedating antihistamines) to its standard post-accident testing program to address the widespread use of prescription and OTC drugs by railroad employees. Both tramadol and the drugs in the sedating antihistamine category have potential side effects that could impair an employee's cognitive abilities (such as the ability to stay awake and alert or the ability to recognize and take appropriate emergency action) or cause impairing conditions (such as dizziness, agitation, and loss of coordination). These drugs are discussed below:

- *Tramadol.* Tramadol is a semi-synthetic opioid. Opioids can be natural (e.g., codeine and morphine), semi-synthetic (e.g., oxycodone and hydromorphone), or wholly synthetic in origin (e.g., methadone). All opioids, regardless of origin, pose risks of sedation, and can cause abuse and dependence with prolonged use.
- *Sedating antihistamines.* This widely used category of drugs includes, but is not limited to, diphenhydramine, chlorpheniramine, brompheniramine, and doxylamine. Sedating antihistamines are used primarily to treat allergy and cold symptoms, but may also be used as sleep aids or as treatment for allergic reactions such as itching and swelling. As their name implies, sedating antihistamines (as opposed to non-sedating antihistamines such as loratadine) have a known tendency to cause drowsiness. Because of this tendency, the manufacturer's instructions on the packaging and labeling of sedating antihistamines caution against use while driving, operating machinery, or performing tasks where alertness is required. Although these drugs are available at both prescription and OTC dosages, sedating anithistamines are usually taken as OTC drugs.

Adding testing for these types of non-controlled substances to its post-accident testing program will enable FRA to detect a broader range of potentially impairing drugs that may contribute to the cause or severity of accidents. As FRA has done for the

controlled substances in its standard post-accident panel, FRA would consult with forensic toxicologists to establish screening and confirmation limits and administrative cut-offs for these non-controlled substances.

Although FRA is not proposing any change in its handling of post-accident test results for controlled substances in accordance with 49 CFR 219.211, FRA is proposing to handle the post-accident results for non-controlled substances differently. Specifically, as mentioned earlier, while sedating antihistamines are available at both prescription and OTC dosages, they are usually taken as OTC drugs. Since by definition these drugs can cause sedation, in 2009 FRA began post-accident testing for sedating antihistamines to determine whether their use is becoming a safety issue in the rail industry. This testing has been for research and accident investigation purposes only, and FRA has not reported any sedating antihistamine test results to railroads or employees. FRA intends to continue its research testing related to sedating antihistamines and in this NPRM proposes to continue to keep the testing results confidential and not report to the relevant railroad or employee any sedating antihistamine post-accident test results. FRA seeks comment on this proposal (i.e., whether the agency should continue to keep post-accident test results for sedating antihistamines confidential).

In contrast, while tramadol is also a non-controlled substance, it is a prescription-only semi-synthetic opioid that can cause drowsiness and dizziness. FRA is seeking specific comments on how it should handle tramadol post-accident test results. Should FRA release post-accident test results for tramadol as it does for other opioids that are controlled substances? Should FRA keep post-accident results for tramadol confidential as it proposes to continue doing for sedating antihistamines? Is there another approach that would better handle tramadol test results?

The proposed addition of these non-controlled substances to FRA's standard post-accident program would not create new direct costs for employers since FRA would bear the costs of the additional post-accident tests. Any additional costs to employers would be minimal and indirect, such as the cost of responding to an increased number of positive post-accident test results should FRA decide to report tramadol or sedating antihistamine results, or both.

**Contents of Standard Post-Accident Testing Box**

As mentioned above, FRA's post-accident testing program has been in existence since 1985. FRA has received suggestions from railroad representatives, collectors, and others on how to make the program's requirements easier to understand and follow. Although not directly related to the regulatory proposals in this NPRM, FRA is incorporating some of these suggestions into its post-accident testing program. For example, FRA is amending the contents of its standard post-accident testing box, which contains instructions, forms and supplies for the collection of urine and blood samples from three surviving employees. (FRA is not changing the contents of its fatalities post-accident testing box.) FRA is updating Form FRA F 6180.74, Post-Accident Testing Blood/Urine Custody and Control Form (Form 74) by deleting outdated information requests (e.g., removing the space for identification of the employee's home terminal in Step 1), streamlining the chain of custody documentation in Step 5, and making other miscellaneous amendments. (FRA is not changing Form FRA F 6180.73, Accident Information Required for Post-Accident Toxicological Testing.) FRA will also add new guidance documents to the contents of its standard post-accident testing box to familiarize individuals who may become involved in the collection of post-accident samples but who do not regularly work with the rail industry (e.g., employees of independent medical facilities and local law enforcement officers) with the post-accident testing program's basis, purpose, and requirements.

**Section-by-Section Analysis**

*Section 219.5—Definitions*

As mentioned above, in FRA's survey of employees involved in reportable human factor accidents, many employees self-reported using multiple substances; most of these, whether prescription drugs, OTC drugs, dietary supplements, or herbal preparations, were non-controlled substances. Part 219 already defines a controlled substance, but FRA believes that a definition of a non-controlled substance is necessary now to help employees better understand the variety of substances available. FRA would define a non-controlled substance as any substance that the DEA has not classified as a controlled substance under the CSA.

*Section 219.13—Preemptive Effect*

FRA is proposing to remove this section from part 219. FRA believes that the preemption language in paragraph (a) of this section is unnecessary because 49 U.S.C. 20106 does not require additional Federal regulatory provisions concerning a regulation's preemptive effect. As stated in the Federalism Implications statement of this NPRM, part 219 could have preemptive effect by operation of law under the Federal Rail Safety Act (FRSA). *See* 49 U.S.C. 20106.

As discussed below, however, FRA is proposing to add language similar to that currently found in paragraph (b) of this section to a new paragraph (c) in § 219.17, clarifying the lack of impact that part 219 has on State criminal law. FRA is keeping this language in part 219 because it is instructive and consistent with long-standing FRA guidance.

*Section 219.17—Construction*

FRA is proposing to add a new paragraph (c) to this section that would contain language similar to that currently found in § 219.13(b). This language would state that part 219 does not impact State criminal laws imposing sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or the public at large. As noted above, similar language is currently found in § 219.13(b) and FRA is not proposing any substantive change with this amendment.

*Section 219.211—Analysis and Follow-Up*

In the second sentence of paragraph (a), FRA proposes to replace the phrase ''alcohol and controlled substances specified by FRA'' with ''alcohol, controlled substances, and non-controlled substances specified by FRA'' to add routine testing for non-controlled substances to its post-accident testing program. From this same sentence, FRA also proposes to delete the reference to submittal of FRA post-accident testing protocols to HHS. As stated earlier, FRA's post-accident testing program is exempted from HHS guidelines. Finally, FRA would add a sentence stating that substances may be tested for in any form, whether naturally or synthetically derived, since controlled substances can be derived from many sources (e.g., opiates can be natural, synthetic, or semi-synthetic in origin.)

FRA also proposes to amend the first sentence of paragraph (b) in this section to limit reporting of post-accident test results to results for controlled

substances only. As mentioned above, FRA is asking for comments on how to handle the reporting of post-accident test results of non-controlled substances (tramadol and sedating antihistamines). FRA may make additional amendments to this paragraph after it has considered any comments received.

**Regulatory Impact and Notices**

*Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures*

This proposed rule has been evaluated in accordance with existing policies and procedures under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket (FRA–2010–0155) a regulatory impact analysis addressing the economic impact of this proposed rule.

As part of the regulatory impact analysis, FRA has assessed pertinent costs expected from the implementation of this proposed rule. FRA has not found any costs associated with this NPRM for the regulated industry. Any associated costs for conducting post-accident testing for non-controlled substances would be nominal and assumed by the Federal government in their entirety. Railroads would not be required to change their collection process and would have to follow the same collection, shipping, and handling processes they currently follow. This means that individuals subject to post-accident testing would provide the same specimens currently required, which would then be tested for tramadol and sedating antihistamines at FRA's expense. Since FRA would use these results for research and accident investigation purposes only, tramadol and sedating antihistamines test results would not be reported directly to either the employee or the employing railroad. This reporting process would apply to both surviving and fatally injured employees. No monetary costs would be imposed on the industry as a result of this addition.

As part of the regulatory impact analysis, FRA has explained what the likely benefits for this proposed rule would be, and provided numerical assessments of the potential value of such benefits. The proposed inclusion of tramadol and sedating antihistamines would generate safety benefits. Qualitative benefits would be generated with the inclusion of sedating antihistamines and tramadol in the post-accident testing panel by providing FRA with the data necessary to carry out research to inform future policy on this topic. The NPRM would generate quantifiable benefits upon the addition of sedating antihistamines to the post-accident testing panel by creating a small deterring effect on the use of sedating antihistamines by railroad workers and encouraging the use of alternative medications for allergic relief. Thus, in general, the proposed rule should reduce railroad accidents and their associated casualties and damages. FRA believes the value of the anticipated safety benefits would exceed the cost to the industry of implementing the proposed rule. Over a 10-year period, this analysis finds that $2.3 million in benefits would accrue through accident prevention. The discounted value of this is $1.9 million (PV, 7 percent). The table below presents the estimated benefits associated with the proposed rule.

10-YEAR ESTIMATED BENEFITS OF PROPOSED RULE

[in millions]

| | Benefits | PV, 7% |
|---|---|---|
| Tramadol | $0 | $0 |
| Sedating Antihistamines | 2.3 | 1.9 |
| Total | 2.3 | 1.9 |

Dollars are discounted at a Present value rate of 7 percent.

**Regulatory Flexibility Act and Executive Order 13272**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

**Paperwork Reduction Act**

The revised information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The section that contains the revised information collection requirement and the estimated time to fulfill this requirement are as follows:

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| 219.211—Analysis and Follow-up—Reports of Positive Post-Accident Toxicological Test (Controlled Substances) to Medical Review Officer and Employee (Revised Requirement). | 698 railroads | 16 reports + 16 report copies. | 15 minutes + 5 minutes | 5 |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether this information collection requirement is necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirement; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the

use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirement should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirement contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirement resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

**Federalism Implications**

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation. FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. This NPRM complies with a statutory mandate, and FRA believes it is in compliance with Executive Order 13132.

This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

This NPRM could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former FRSA, repealed and recodified at 49 U.S.C 20106. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106.

**Environmental Impact**

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

**Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The value equivalent of $100 million in CY 1950, adjusted annually for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. This assessment may be included in conjunction with other assessments, as it is here. The proposed rule would not create an unfunded mandate in excess of the threshold amount.

**Energy Impact**

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211, and determined that it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Privacy Act**

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the

document (or signing the document), if submitted on behalf of an association, business, labor union, etc.). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.dot.gov/privacy.html*.

**List of Subjects in 49 CFR Part 219**

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

**The Proposed Rule**

For the reasons stated above, FRA proposes to amend part 219 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

## PART 219—[AMENDED]

1. The authority citation for part 219 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 219.5 by adding the following definition for ''*Non-controlled substance*'' in alphabetical order to read as follows:

**§ 219.5 Definitions.**

* * * * *

*Non-controlled substance* means any substance (including prescription medications, over-the-counter products, dietary supplements, and herbal preparations) which is not currently regulated under 21 U.S.C. 801–971 or 21 CFR part 1308.

* * * * *

**§ 219.13 [Removed and Reserved]**

3. Remove and reserve § 219.13.

4. Amend § 219.17 by adding paragraph (c) to read as follows:

**§ 219.17 Construction.**

* * * * *

(c) Impacts provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

5. Amend § 219.211 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 219.211 Analysis and follow-up.**

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of specimens provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol, controlled substances, and non-controlled substances specified by FRA under protocols specified by FRA. These substances may be tested for in any form, whether naturally or synthetically derived. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing for controlled substances conducted under this subpart are reported to the railroad's Medical Review Officer and the employee. * * *

* * * * *

6. Revise Appendix B to part 219 to read as follows:

**Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing**

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part: Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084, Telephone: (800) 729–6432.

Issued in Washington, DC, on May 10, 2012.

**Melissa L. Porter,**

*Chief Counsel.*

[FR Doc. 2012–11969 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–06–P

# Notices

Federal Register

Vol. 77, No. 96

Thursday, May 17, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 14, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary 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 burden 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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Animal and Plant Health Inspection Service**

*Title:* Quarantine for Hawaii and United States Territories.

*OMB Control Number:* 0579–0198.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701-*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant products to prevent the introduction of plant pest into the United States or their dissemination within the United States. The Plant Protection and Quarantine, a program within the Animal and Plant Health Inspection Service (APHIS), is responsible for implementing the Act and does so through the enforcement of APHIS' Hawaiian and Territorial Quarantine Regulations, contained in Part 318 of Title 7, Code of Federal Regulations. Hawaiian and territorial quarantines are necessary to prevent the spread of dangerous plant diseases and pests. APHIS will collect information using forms PPQ 519, Compliance Agreement and PPQ 530, Limited Permit.

*Need and Use of the Information:* APHIS will collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. The information collected will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 110.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 3,096.

**Animal and Plant Health Inspection Service**

*Title:* CWD ELK Herd Certification Program.

*OMB Control Number:* 0579–0237.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002, is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Disease prevention is the most effective method for maintaining a healthy animal population for enhancing the United States' ability to compete in the world market of animal and animal product trade. Chronic Wasting Disease (CWD) is a transmissible spongiform encephalopathy of elk, deer, and moose typified by chronic weight loss leading to death. The Animal and Plant Health Inspection Service (APHIS) is publishing an amended CWD final rule to create a cooperative, voluntary Federal-State-private sector CWD Herd Certification Program designed to actively identify farmed or captive herds infected with CWD and provide for the management of these herds in a way that will prevent further spread of CWD.

*Need and Use of the Information:* Implementing the program will require the following information collection activities: (1) A Memorandum of Understanding between APHIS and participating States by a request from the State; (2) A formal request to participate in the program; (3) A formal request to participate by State; (4) Wild Cervid Identification (for Interstate movement); (5) Farmed Cervid Identification; (6) Reporting of cervid escape, disappearances, and deaths; (7) Recordkeeping: Herd records including inventory; (8) Certificate and/or animal identification documents to move cervids interstate; (9) An appeal letter to contest a suspension from the program; (10) A herd or premises plan if CWD is discovered; and (11) Lab submission. Failing to collect this information would make it impossible for APHIS to launch its CWD Herd Certification Program, thereby hindering APHIS's ability to prevent and control the spread of CWD in the United States.

*Description of Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 2,300.

*Frequency of Responses:* Recording; Reporting: On occasion.

*Total Burden Hours:* 157,536.

**Animal and Plant Health Inspection Service**

*Title:* Importation of Peppers from Certain Central American Countries.

*OMB Control Number:* 0579–0274.

*Summary of Collection:* Under the Plant Protection Act (PPA) (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress,

control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47). The Animal and Plant Health Inspection Service (APHIS) amended the fruits and vegetables regulations to allow certain type of peppers grown in approved registered production sites in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua to be imported, under certain conditions, into the United States without treatment while continuing to provide protection against the introduction of quarantine pests into the United States.

*Need and Use of the Information:* The regulations require the use of information collection activities including inspections by Central American national plant protection organization officials, fruit fly trapping, monitoring, recordkeeping, box labeling, and phytosanitary certificate.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 245.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 2,999.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–11970 Filed 5–16–12; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee (LTFAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Federal Advisory Committee will hold a meeting on June 14, 2012 at the Tahoe Regional Planning Agency, 128 Market Street, Stateline, Nevada 89449–5310. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held June 14, 2012, beginning at 9:00 a.m. and ending at 12:00 p.m.

**ADDRESSES:** Tahoe Regional Planning Agency, 128 Market Street, Stateline, Nevada 89449–5310.

*For Further Information or to Request An Accommodation Contact:* Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

**SUPPLEMENTARY INFORMATION:** Items to be covered on the agenda: (1) Update and planning for the Tahoe Summit, (2) the revised Vision for consideration and formal consensus, and (3) public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: May 9, 2012.

**Nancy J. Gibson,**

*Forest Supervisor.*

[FR Doc. 2012–11960 Filed 5–16–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–908]**

### Sodium Hexametaphosphate From the People's Republic of China: Extension of Time Limit for the Final Results

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** Effective Date: May 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.0413.

#### Background

On March 23, 2012, the Department of Commerce (the ''Department'') published in the **Federal Register** the *Preliminary Results* of the second administrative review of sodium hexametaphosphate from the People's Republic of China (''PRC''), covering the period March 1, 2010 to February 28, 2011.[1] The final results of this administrative review are currently due on July 21, 2012.

#### Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act''), requires the Department to issue the final results of an administrative review within 120 days after the date on which the *Preliminary Results* have been published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

The Department determines that completion of the final results of this review within the statutory time period is not practicable. The Department requires more time to analyze a significant amount of information pertaining to the respondent's corporate structure and ownership, sales practices and manufacturing methods. Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of review by 60 days until September 19, 2012.

This notice is published pursuant to sections 751(a)(1)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: May 4, 2012.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2012–11889 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Meeting of the President's Export Council

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The President's Export Council will hold a meeting to discuss topics and provide recommendations related to the National Export Initiative and export promotion.

**DATES:** June 6, 2012 at 9:30 a.m. (ET).

**ADDRESSES:** The President's Export Council will convene this meeting via

[1] *See Sodium Hexametaphosphate from the People's Republic of China: Preliminary Results of Second Antidumping Duty Administrative Review,* 77 FR 17013 (March 23, 2012) (''*Preliminary Results*'').

live Webcast on the Internet at *http://whitehouse.gov/live.*

**FOR FURTHER INFORMATION CONTACT:** Tricia Van Orden, Executive Secretary, President's Export Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–5876, email: *tricia.vanorden@trade.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and report to the President on its activities and on its recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 13585 of September 30, 2011, for the two-year period ending September 30, 2013. This Committee is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

*Public Submissions:* The public is invited to submit written statements to the President's Export Council by C.O.B. May 25, 2012 by either of the following methods:

**Electronic Statements**

Submit electronic statements via the President's Export Council Web site at *http://trade.gov/pec/peccomments.asp;* or

**Paper Statements**

Send paper statements to Tricia Van Orden, Executive Secretary, President's Export Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230. All statements will be posted on the President's Export Council Web site (*http://trade.gov/pec/peccomments.asp*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

*Meeting minutes:* Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting.

Dated: May 8, 2012.

**Tricia Van Orden,**

*Executive Secretary, President's Export Council.*

[FR Doc. 2012–11519 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–DR–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–981, A–552–814]**

### Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** May 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** Shawn Higgins (People's Republic of China) or Magd Zalok (Socialist Republic of Vietnam), AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0679 or (202) 482–4162, respectively.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determinations**

On January 24, 2012, the Department of Commerce (the ''Department'') published a notice of initiation of antidumping duty investigations of utility scale wind towers from the People's Republic of China and the Socialist Republic of Vietnam.[1] The notice of initiation stated that the Department, in accordance with section 773(b)(1)(A) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.205(b)(1), would issue its preliminary determinations for these investigations, unless postponed, no later than 140 days after the date of the initiation. The preliminary determinations of these antidumping duty investigations are currently due no later than June 6, 2012.

On May 3, 2012, the Wind Tower Trade Coalition (''Petitioner''), pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), made a timely request for postponement of the preliminary determinations in these investigations.[2] Petitioner requested a 50-day postponement of the preliminary determinations in order to provide the Department with sufficient time to review the questionnaire responses and issue appropriate requests for clarification and additional information.

Because there are no compelling reasons to deny the request, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 190 days after the date on which the Department initiated these investigations. Therefore, the new deadline for issuing these preliminary determinations is July 26, 2012.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 10, 2012.

**Lynn Fischer Fox,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 2012–11980 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440 (January 24, 2012).

[2] *See* Letter from Petitioner to the Secretary of Commerce, ''Certain Utility Scale Wind Towers from the People's Republic of China and the Socialist Republic of Vietnam: Request to Fully Extend Preliminary Determination'' (May 3, 2012).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC015**

### New England Fishery Management Council; Public Meeting;

*Correction*

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

**ACTION:** Notice; correction.

**SUMMARY:** The New England Fishery Management Council (Council) has changed the date of its Groundfish Advisory Panel Meeting on Wednesday, May 23, 2012. The date of the meeting will now be Tuesday, May 22, 2012. The meeting was announced in the **Federal Register** on May 4, 2012.

**DATES:** The meeting will be held on Tuesday, May 22, 2012, at 9 a.m.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

*Correction*

The initial notice published on May 4, 2012 (77 FR 26515). The **DATES** caption has been corrected. The agenda and the rest of the text have not changed and will not be repeated here.

**Special Accommodations**

Requests for special accommodations should be addressed to the New England Fishery Management Council,

50 Water Street, Newburyport, MA 01950; telephone: (978) 465–0492.

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

Dated: May 14, 2012.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–11968 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC026**

### 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 Mid-Atlantic Fishery Management Council's Mackerel, Squid, and Butterfish (MSB) Monitoring Committee will hold a public meeting.

**DATES:** The meeting will be held on May 31, 2012 from 9 a.m. until 1 p.m.

**ADDRESSES:** The meeting will be held via Webinar with a listening station also available at the Council Address below. Webinar registration: *https://www1.gotomeeting.com/register/474223601.*

*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:** The primary purpose of the meeting is to develop recommendations for the Council regarding the management of Atlantic mackerel, butterfish, longfin (*Loligo*) squid, and *Illex* Squid for 2013, including annual catch limits, annual catch targets, accountability measures, and other management measures.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions 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 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: May 11, 2012.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2012–11918 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Marine Protected Areas Federal Advisory Committee; Public Meeting

**AGENCY:** National Ocean Service, NOAA, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Silver Spring, Maryland.

**DATES:** The meeting will be held Tuesday, June 12, 2012, from 8:30 a.m. to 5:30 p.m., Wednesday, June 13, from 8:30 a.m. to 5:00 p.m., and Thursday, June 14, from 8:30 a.m. to 12:00 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kara Yeager, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–3100 x162, Fax: 301–713–3110); email: *kara.yeager@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

**SUPPLEMENTARY INFORMATION:** The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, which calls for the development of a National System of MPAs. The National System aims to strengthen existing MPAs and MPA programs through national and regional coordination, capacity building, science and analysis. The meeting is open to the public, and public comment will be accepted from 3:00 p.m. to 4:00 p.m. on Wednesday, June 13, 2012. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by June 8, 2012.

*Matters To Be Considered:* This meeting will be a joint meeting of the Committee and National System of MPA Partners (representatives from state and federal MPA agencies). The focus of the meeting will be learning about the findings and recommendations of the MPA Center External Review, sharing information about capabilities, needs and priorities of partners, and identifying ways in which the Committee can better support the federal and state programs that make up the National System of MPAs. The Committee meeting will include a panel presentation on MPAs and recreation and tourism. The Committee will receive a draft charge and form Subcommittees to address that charge. The agenda is subject to change. The latest version will be posted at *http://www.mpa.gov.*

Dated: May 12, 2012.

**Margaret A. Davidson,**

*Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic Atmospheric Administration.*

[FR Doc. 2012–11949 Filed 5–16–12; 8:45 am]

**BILLING CODE 3510–08–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, May 23, 2012; 10 a.m.–11 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**Matter To Be Considered**

*Compliance Status Report*

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 15, 2012.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2012–12135 Filed 5–15–12; 4:15 pm]

**BILLING CODE 6355–01–P**

## DENALI COMMISSION

### Fiscal Year 2011 Draft Work Plan

**AGENCY:** Denali Commission.

**ACTION:** Notice.

**SUMMARY:** The Denali Commission (Commission) is an independent federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121). The Denali Commission Act requires that the Commission develop proposed work plans for future spending and that the annual Work Plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment.

This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2011.

**DATES:** Comments and related material to be received by June 10, 2012.

**ADDRESSES:** Submit comments to the Denali Commission, Attention: Sabrina Hoppas, 510 L Street, Suite 410, Anchorage, AK 99501.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sabrina Hoppas, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. Email: *shoppas@denali.gov.*

On June 17, 2011, the Commission published in the **Federal Register** a proposed FY 2011 Work Plan. The Commission met subsequently and recommended an amended FY 2011 Work Plan, as presented in this document.

Several factors contributed to this amended FY 2011 Work Plan including continuing resolutions (CRs) passed by Congress late in the fiscal year resulting in latent consideration of the FY 2011 annual Work Plan by the Commissioners (Commissioners met on June 2, 2011 to consider the FY 2011 annual Work Plan). In addition, the final FY 2011 budget included a rescission of $15,000,000 in prior year unobligated funds and uncertainty on how the rescission may impact the FY2011 Work Plan was not resolved until September 2011.

With concurrence from the Office of Management and Budget and the Secretary of Commerce, the amended FY 2011 annual Work Plan will be processed concurrently with the FY 2012 Work Plan. The FY 2012 annual Work Plan is not included as part of this amended FY 2011 annual Work Plan document.

Changes are as follows.

Final FY 2011 funding received is provided in the table below.

| Denali Commission FY 2011 funding table | Totals |
|---|---|
| FY 2011 Energy & Water Appropriation | $10,678,600 |
| FY 2011 USDA, Rural Utilities Service (RUS) | 5,775,000 |
| FY 2011 Trans Alaska Pipeline Liability (TAPL) Trust | 7,010,000 |
| FY 2011 Federal Transit Administration (FTA) | 5,000,000 |
| Total FY 2011 Federal Program Available | 28,463,600 |

Final FY 2011 obligations and expenditures are discussed below.

*Administrative Funds:* Reduced from $2,558,250 to $2,000,000.

*Energy Program:* The bulk fuel and rural power system upgrade programs are reduced from $3,770,350 to $1,828,600. Renewable energy planning and community technical assistance on heating, power and transportation energy use is unchanged ($300,000). The emerging energy technology fund is reduced from $2,400,000 to $1,700,000.

*Transportation Program:* It is noted that the $14,025,000 shown in the FY 2011 Work Plan for FY 2011 Federal Highway Administration funding (FHWA) was not provided to the Commission, but was provided directly to the Alaska Department of Transportation.

*Health Program:* Reduced from $700,000 to $0.

*Training Program:* Reduced from $500,000 to $0.

*Development Program:* Reduced from $250,000 to $0.

*Solid Waste Program:* Reduced from $100,000 to $0.

*Sponsorship Program:* Reduced from $100,000 to $0.

The reductions noted above total $4,850,000 and were used to address the $15,000,000 rescission. Also, a total of $10,150,000 in prior year unobligated funding was used to address the $15,000,000 rescission.

**Joel Neimeyer,**

*Federal Co-Chair.*

[FR Doc. 2012–11943 Filed 5–16–12; 8:45 am]

**BILLING CODE 3300–01–P**

## DENALI COMMISSION

### Fiscal Year 2012 Draft Work Plan

**AGENCY:** Denali Commission.

**ACTION:** Notice.

**SUMMARY:** The Denali Commission (Commission) is an independent federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and in training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121). The Denali Commission Act requires that the Commission develop proposed work plans for future spending and that the annual Work Plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment.

This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2012.

**DATES:** Comments and related material to be received by June 12, 2012.

**ADDRESSES:** Submit comments to the Denali Commission, Attention: Sabrina Hoppas, 510 L Street, Suite 410, Anchorage, AK 99501.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sabrina Hoppas, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. Email: *shoppas@denali.gov.*

*Background:* The Denali Commission (Commission) is an independent federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998, Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121).

The Commission's mission is to partner with tribal, federal, state, and

local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities.

Pursuant to the Denali Commission Act, as amended, the Commission determines its own basic operating principles and funding criteria on an annual federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual Work Plan. The Work Plan is adopted on an annual basis in the following manner, which occurs sequentially as listed:

- Commissioners first forward an approved draft version of the Work Plan to the Federal Co-Chair.
- The Federal Co-Chair approves the draft Work Plan for publication in the **Federal Register** providing an opportunity for a 30-day period of public review and written comment. During this time, the draft Work Plan is also disseminated widely to Commission program partners including, but not limited to the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), and the United States Department of Agriculture—Rural Development (USDA–RD).
- Public comment concludes and Commission staff provides the Federal Co-Chair with a summary of public comment and recommendations, if any, associated with the draft Work Plan.
- If no revisions are made to the draft, the Federal Co-Chair provides notice of approval of the Work Plan to the Commissioners, and forwards the Work Plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co-Chair provides notice of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the Work Plan to the Secretary of Commerce for approval.
- The Secretary of Commerce approves the Work Plan.

**FY 2012 Annual Work Plan (Amended)**

In FY 2011, the typical annual Work Plan process was not carried out. Several factors contributed to this including continuing resolutions (CRs) passed by Congress late in the fiscal year resulting in latent consideration of the FY 2011 annual Work Plan by the Commissioners (Commissioners met on June 2, 2011 to consider the FY 2011 annual Work Plan). In addition, the final FY 2011 budget included a rescission of $15,000,000 in prior year unobligated funds and uncertainty on how the rescission may impact the FY 2011 Work Plan was not resolved until September 2011.

With concurrence from the Office of Management and Budget (OMB) and the Secretary of Commerce, the amended FY 2011 Work Plan will be processed concurrently with the FY 2012 Work Plan. The FY 2011 Work Plan and the amended budget for the FY 2011 Work Plan are not included as part of this FY 2012 Work Plan document.

**FY 2012 Appropriations Summary**

The Denali Commission has historically received several federal funding sources (identified by the varying colors in the table below). These fund sources are governed by the following general principles:

- In FY 2012 no project specific earmarks were directed.
- The Energy and Water Appropriation is eligible for use in all programs, but has historically been used substantively to fund the Energy Program.
- All other funds outlined below may be used only for the specific program area and may not be used across programs. For instance, Federal Transit Administration funding, which has in the past been appropriated for the Transportation Program, may not be moved to the Energy Program.
- Final transportation funds received may be reduced due to agency modifications, reductions and fees determined by the U.S. Department of Transportation. Final program available figures may not be provided until later this spring.
- All Energy and Water Appropriation funds, including operational funds, designated as ''up to'' may be reassigned to the Legacy Energy Program, Bulk Fuel and Rural Power System Upgrades, if they are not fully expended in a program component area or a specific project.
- Total FY 2012 Budgetary Resources provided:

These are the figures that appear in the rows entitled ''FY 2012 Appropriation'' and are the original appropriations amounts which do not include Commission overhead deductions. These funds are identified by their source name (i.e., Energy and Water Appropriation, USDA–RUS, etc.). The grand total for all appropriations appears at the end of the FY 2012 Funding Table.

- Total FY 2012 Program Available Funding:

These are the figures that appear in the rows entitled ''FY 2012 Appropriations—Program Available'' and are the amounts of funding available for program(s) activities after Commission overhead has been deducted. The grand total for all program available funds appears at the end of the FY 2012 Funding Table.

- Program Funding:

These are the figures that appear in the rows entitled with the specific Program and Sub-Program area, and are the amounts of funding the Draft FY 2012 Work Plan recommends, within each program fund source for program components.

- Subtotal of Program Funding

These are the figures that appear in rows entitled ''subtotal'' and are the subtotals of all program funding within a given fund source. The subtotal must always equal the Total FY 2012 Program Available Funding.

| Denali Commission FY 2011 Funding Table | Totals |
|---|---|
| FY 2012 Energy & Water Appropriation | $10,679,000. |
| FY 2012 Energy & Water Appropriation—Administrative Funds | $3,294,000. |
| FY 2012 Energy & Water Appropriation—Program Available | $7,385,000. |
| Energy | $7,385,000. |
| *Emerging Energy Technology Program* | $2,400,000. |
| *Bulk Fuel/RPSU Planning, Design & Construction* | $3,770,350. |
| *Renewable Energy Technical Assistance* | Up to $300,000. |
| *Total Energy Projects* | *$6,470,350.* |

| Denali Commission FY 2011 Funding Table | Totals |
|---|---|
| *Health* | $0. |
| *Training Program* | $0. |
| *Economic Development* | $0. |
| *Solid Waste Program* | $0. |
| *Sponsorship Program* | $0. |
| Sub-total $ | $8,120,350. |
| FY 2012 USDA, Rural Utilities Service (RUS)—pending estimate | $2,900,000. |
| FY 2012 USDA, Rural Utilities Service (RUS)—Program Available (less 4% overhead) | $2,784,000. |
| *Bulk Fuel/RPSU Planning, Design & Construction* | $2,784,000. |
| Sub-total $ | $2,784,000. |
| FY 2012 Trans Alaska Pipeline Liability (TAPL) Trust | $6,800,000. |
| FY 2012 Trans Alaska Pipeline Liability (TAPL)—Program Available (less 5% overhead). | $6,460,000. |
| *Bulk Fuel Planning, Design & Construction* | $6,460,000. |
| Sub-total $ | $6,460,000. |
| FY 2012 Federal Transit Administration (FTA)—Estimate: *$5,000,000 from section 3011 (FTA) for docks and harbors*. | $5,000,000. |
| FY 2012 Federal Highway Administration (FHWA)—Estimate: *For necessary, expenses for the Denali Access System Program as authorized under Section 1960 of Public Law 109–59*. | $0–$24,700,000. |
| FY 2012 Transportation Program Available—(less 5%) | $4,750,000–$28,215,000. |
| *Transportation Program: Docks & Harbors* | $4,750,000. |
| *Transportation Program: Roads—Estimate* | $0–$23,465,000. |
| Sub-total $ | $4,750,000–$28,215,000. |
| Total FY 2012 Federal Program Available | $21,379,000–$44,844,000. |

FY 12 Program Details & General Information

The following section provides narrative discussion, by each of the Commission Programs identified for funding in the FY 2012 funding table above.

Government Coordination

The Commission is charged with the special role of increasing the effectiveness of government programs by acting as a catalyst to coordinate the many federal and state programs that serve Alaska. In FY 2011 the Commission will continue its role of coordinating State and Federal agencies and other partner organizations to accomplish its overall mission of developing Alaska's communities. Particular focus will be given to the collaborative efforts of the Commission's Federal and State Memorandum of Understanding (MOU) and the Sustainable Rural Communities initiative. Strategies and next steps for this effort will be formulated as the Denali Commission leads this unique collaborative effort. No funding is dedicated to this activity.

Energy Program

*Basic Rural Energy Infrastructure*

The Energy Program is the Commission's original program and focuses on bulk fuel facilities (BFU) and rural power system upgrades/power generation (RPSU) across rural Alaska. About 94% of electricity in rural communities is produced by diesel generators and about half the fuel storage in most villages is used for these power plants for distribution. Alternative means of generating power can reduce the capacity needed for fuel storage and ultimately reduce the cost of power to the community.

*Alternative/Renewable Program and Emerging Technologies*

The *Energy Policy Act of 2005* established new authorities for the Commission's Energy Program with an emphasis on alternative and renewable energy projects. Although the 2005 Energy Policy Act did not include appropriations, the Commission is expected to carry out the intent of the Act through a portion of its Energy and Water Appropriation funding. To date, the Commission has co-funded a number of renewable projects and each year new initiatives are considered. After providing seed funding toward the initiative, in 2007, the State of Alaska passed legislation and funded the Renewable Energy Fund (REF).

With the advent of the REF, State resources to meet commercial-ready renewable technology needs are available, yet a gap in meeting the emerging energy technology needs was identified. Similar to the REF partnership, the newly established Emerging Energy Technology Fund (EETF) was provided seed funding to support demonstration projects for applied research and further technologies focusing on deployment in rural Alaska. The EETF has since passed the State Legislature, has formed its selection process and is proceeding with project selection.

*Other Renewable Initiatives*

As the Renewable Energy Fund and Emerging Energy Technology Fund proceed, the Commission strives to support their success. In 2011, the Commission funded $300,000 toward Renewable Energy Technical Assistance, which resulted in match funding from the Department of Energy toward the newly established State Technical Assistance Response Team (START). The START effort provides technical assistance to a select number of communities to help assess energy needs, deal with barriers and identify funding options. To keep with the 2005

direction to fund renewable and alternative energy, the FY 2012 Work Plan includes $300,000 toward this effort in 2012. The FY 2011 Work Plan outlines a strategy to balance the Energy Program in both legacy and renewable components, providing up to $2.4 million of available program funds specifically toward the emerging technology program pending state match. If match for this program is not provided, this funding shall be reallocated to legacy projects.

*FY 2012 Program & Project Policy Issues*

The approved FY 2008 Denali Commission Policy Document requires and prioritizes cost share match for funded projects. In implementing this policy, 10%, match was required in FY 2010 and FY 2011. In FY 2012 new statutory match is required in the amounts of 50% for non-distressed and 20% for distressed communities and only applies toward construction projects using Energy and Water Appropriation funding. In future funding years, the Commission will require consistent match for energy projects funded with other funding (TAPL, RUS). For FY 2012 funding, the Commission will apply the 10% match for RUS and TAPL funding and the 50% and 20% match requirements for Energy and Water Appropriation funding.

*Sustainability Policy*

All energy construction grants will proceed after business plans are reviewed and approved by Commission.

*FY 2012 Project Selection Process*

The Energy Advisory Committee (EAC) provides guidance to Commissioners and staff on the program, and is comprised of members involved in energy development in Alaska. Members include representatives of Associated General Contractors, Alaska AFL–CIO, Department of Energy National Renewable Energy Lab, the University of Alaska Institute of Northern Engineering, USDA, Kotzebue Electric Association and two public members representing rural Alaska. The EAC provided general recommendations supporting the ongoing priority for funding Bulk Fuel/Rural Power System Upgrade planning, design and construction, providing match funding for the emerging energy technology program and for renewable energy regional planning in coordination with the Alaska Energy Authority's initiative to meet statewide energy infrastructure needs for all of the above.

*Legacy Program (Bulk Fuel/RPSU)*

Due to the nature of the due diligence requirement of energy projects, seasonal logistics in Alaska and funding restrictions (i.e. TAPL funds may only be used for bulk fuel projects)—a project may not progress as quickly as another. Given the late timing of funding in FY 2011, summer construction grants are not anticipated. A final project list will be developed based on available funds, project readiness, available match and other due diligence. Final project lists are provided to EAC for feedback prior to final grant execution.

**Transportation**

Section 309 of the Denali Commission Act 1998 (amended), created the Commission's Transportation Program, including the Transportation Advisory Committee. The advisory committee is composed of nine members appointed by the Governor of the State of Alaska including the Chairman of the Denali Commission; four members who represent existing regional native corporations, native nonprofit entities, or tribal governments, including one member who is a civil engineer; and four members who represent rural Alaska regions or villages, including one member who is a civil engineer.

The Transportation Program addresses two areas of rural Alaska transportation infrastructure: Roads and waterfront development. There is consensus among agencies and communities that the program is successfully addressing improvements to local and regional transportation systems. This is largely a function of the TAC's success at project selection and monitoring, and the success of the program's project development partners. The program is generally a competitively-bid contractor or materials-based project opportunity grounded in Title 23 CFR. These strict project development and construction guidelines have presented some challenges to the Commission's ability to respond quickly to targets of opportunity, but they have also had the positive effect of ensuring project design and construction is executed at a professional level. The program operates under a reimbursable payment system that requires local and program partner sponsors to pay close attention to accounting procedures prior to their payments to contractors and vendors. This system helps ensure project payments are eligible when submitted to the Commission.

In FY 2012 the program will continue its focus on barge landings and mooring points in rural communities. These projects range from one or two mooring points to secure a barge, to small dock structures, depending on community size and barge operation characteristics. The value of these structures lies in improved fuel/freight transfer operations and improved worker and environmental safety. The Commission and the U.S. Army Corps of Engineers (USACE) will continue to work through the prioritized list of barge landing and mooring point projects which were identified in a formal analysis conducted in FY 2009 and FY 2010. The universe of need for the first generation of projects is in the range of $40,000,000.

The TAC met on January 26–27, 2012 to select waterfront projects and will meet in early summer to select road project priorities for FY 2012. Final project approvals and funding amounts have been approved by the Federal Co-Chair and are available on the Commission's Web site.

As shown in the FY 2012 Funding Table, the estimate for FHWA funding ranges from $0 to $24,700,000. In 2011 continuing resolution language, the U.S. Secretary of Transportation was assigned the responsibility by Congress to identify FHWA projects and programs that were sufficiently funded (i.e. completed). In following this assignment, the Secretary determined that the Denali Access Program was sufficiently funded and $13,300,000 in FY 2011 FHWA funding was assigned to the Alaska Department of Transportation. At the request of the Denali Commission Inspector General, GAO is presently considering whether the Secretary had the authority to make this determination regarding the Denali Access Program. At the time of drafting this 2012 annual Work Plan, the GAO Comptroller General has not yet issued an opinion. Therefore, depending upon the forthcoming opinion the Commission may receive no FHWA funding or potentially receive both FY 2011 and FY 2012 FHWA funding—totaling $24,740,000.

**Joel Neimeyer,**

*Federal Co-Chair.*

[FR Doc. 2012–11936 Filed 5–16–12; 8:45 am]

**BILLING CODE 3301–01–P**

## ELECTION ASSISTANCE COMMISSION

### Proposed Information Collection; Election Administration in Urban and Rural Areas; Comment Request

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** On February 21, 2012, EAC published a notice in accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. EAC announced an information collection and sought public comment on the provisions thereof. In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces an information collection and seeks public comment on the provisions thereof. EAC, pursuant to 5 CFR 1320.5(a)(iii), intends to submit this proposed information collection (Election Administration in Urban and Rural Areas) to the Director of the Office of Management and Budget for approval. The Election Administration in Urban and Rural Areas survey asks election officials questions concerning voter outreach and election personnel. EAC will conduct the survey as a way to obtain data and information for a mandatory report to Congress as stipulated under HAVA 241 (B)(15), which requires EAC to study ''[m]atters particularly relevant to voting and administering election in rural and urban areas.'' Further, Section 202(3) of HAVA authorizes EAC to conduct studies and to carry out other duties and activities to promote the effective administration of Federal elections.

**DATES:** Written comments must be submitted on or before 4:00 p.m. EDT on June 18, 2012.

Comments: Public comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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 through the use of automated collection techniques or other forms of information technology.

*Additional Information:* Please note that the Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Comments on the proposed information collection should be submitted to OMB within 30 days of this notice. Comments should be sent to the attention of Sharon Mar, Desk Officer for the U.S. Election Assistance Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments sent to OMB should also be sent to EAC at *HAVAinfo@eac.gov* with Urban/Rural study as the subject line. Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 1201 New York Avenue NW., Suite 300, Washington, DC 20005, ATTN: Urban/Rural Study.

*Obtaining a Copy of the Survey:* To obtain a free copy of the survey: (1) Access the EAC Web site at *www.eac.gov;* (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1201 New York Avenue NW., Suite 300, Washington, DC 20005, ATTN: Urban/Rural Study.

**FOR FURTHER INFORMATION CONTACT:** Karen Lynn-Dyson or Shelly Anderson at (202) 566–3100.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Election Administration in Urban and Rural Areas; OMB Number Pending.

*Summary of the Collection of Information:* The survey requests information at the local level concerning the following categories:

*Background:* (1) Number of years served as an election official; type of appointment; (2) number of registered voters; (3) jurisdiction described as urban or rural; (4) jurisdiction required to provide language assistance; (5) office have full responsibility for elections in the jurisdiction; (6) alternative forms of voting allowed in the jurisdiction (absentee—excuse required, no-excuse absentee, early voting, all vote-by-mail).

*Voter Outreach:* (7) type of voter outreach provided to the public; (8) outreach efforts coordinated with third-party/civic organizations; type of voter outreach coordinated; type of organizations with which the jurisdiction works; (9) voter outreach activities that focus on specific groups; (10) cost of voter outreach efforts in 2010; (11) estimated cost of voter outreach efforts in 2012; (12) how voter outreach efforts were paid for; (13) ease or difficulty of engaging in voter outreach; (14) reasons outreach may have been difficult.

*Personnel:* (15) number of paid full-time, part-time, and temporary staff in 2010; (16) number of poll workers used in 2010; (17) number of paid full-time, part-time, and temporary staff in 2012; (18) number of poll workers used in 2012; (19) poll worker pay; (20) sources for recruiting poll workers; (21) ease or difficulty of obtaining poll workers; (22) reasons obtaining poll workers may have been difficult; (23) jurisdiction offer split shifts for poll workers; (24) additional comments.

*Affected Public (Respondents):* Local governments that administer Federal elections.

*Affected Public:* Local government.

*Number of Respondents:* 5,000.

*Responses per Respondent:* 1.

*Estimated Burden Per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 1,500 hours.

*Frequency:* One-time data collection.

**Mark A. Robbins,**

*Acting Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 2012–11919 Filed 5–16–12; 8:45 am]

BILLING CODE 6820–KF–P

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting 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, June 7, 2012, 10:00 a.m. to 3:00 p.m.

**ADDRESSES:** Crowne Plaza Chicago O'Hare, 5440 North River Road, Rosemont, Illinois 60018.

**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:* The Coal Policy Committee of the National Coal Council will review the draft of a report requested by Secretary of Energy Steven Chu in a letter dated October 28, 2011, to the Council.

**Tentative Agenda**

- Review and action on the report.
- Adjourn.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any potential items 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 the scheduled oral

statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The NCC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NCC Web site at *http://www.nationalcoalcouncil.org/.*

Dated: Issued at Washington, DC, on May 11, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–11977 Filed 5–16–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

**[Docket No. EERE–2011–BT–DET–0057]**

**RIN 1904–AC59**

## Updating State Residential Building Energy Efficiency Codes

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

**ACTION:** Notice of final determination.

**SUMMARY:** The Department of Energy (DOE or Department) has determined that the 2012 edition of the International Code Council (ICC) International Energy Conservation Code (IECC) (2012 IECC or 2012 edition) would achieve greater energy efficiency in low-rise residential buildings than the 2009 IECC. Upon publication of this affirmative final determination, States are required to file certification statements to DOE that they have reviewed the provisions of their residential building code regarding energy efficiency and made a determination as to whether to update their code to meet or exceed the 2012 IECC. Additionally, this Notice provides guidance to States on how the codes have changed from previous versions, and the certification process.

**DATES:** Certification Statements by the States must be provided by May 17, 2014.

**ADDRESSES:** Certification Statements must be addressed to the Buildings Technologies Program-Building Energy Codes Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121.

**FOR FURTHER INFORMATION CONTACT:** Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–1874, email: *michael.erbesfeld@ee.doe.gov.* For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0669, email: *kavita.vaidyanathan@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Introduction
A. Statutory Requirements
B. Background
C. Public Comments on the Preliminary Determination
D. DOE's Final Determination Statement
II. Discussion of Changes in the 2012 IECC
A. Changes in the 2012 IECC That Increase Energy Efficiency
B. Changes in the 2012 IECC That Decrease Energy Efficiency
C. Changes in the 2012 IECC That Have an Unclear Impact on Energy Efficiency
D. Changes in the 2012 IECC That Do Not Affect Energy Efficiency
III. Filing Certification Statements With DOE
A. State Determinations
B. Certification
C. Request for Extensions
IV. Regulatory Analysis
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the National Environmental Policy Act of 1969
D. Review Under Executive Order 13132, ''Federalism''
E. Review Under the Unfunded Mandates Reform Act of 1995
F. Review Under the Treasury and General Government Appropriations Act of 1999
G. Review Under the Treasury and General Government Appropriations Act of 2001
H. Review Under Executive Order 13211
I. Review Under Executive Order 13175

## I. Introduction

### *A. Statutory Requirements*

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for the Building Energy Standards Program. (42 U.S.C. 6831–6837) Section 304(a) of ECPA provides that when the 1992 Model Energy Code (MEC), or any successor to that code, is revised, the Secretary must determine, not later than 12 months after the revision, whether the revised code would improve energy efficiency in residential buildings and must publish notice of the determination in the **Federal Register**. (42 U.S.C. 6833(a)(5)(A)) The Department, following precedent set by the ICC and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) considers high-rise (greater than three stories) multifamily residential buildings and hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Low-rise residential buildings include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multifamily buildings (not greater than three stories) such as condominiums and garden apartments.

If the Secretary determines that the revision would improve energy efficiency then, not later than 2 years after the date of the publication of the affirmative determination, each State is required to certify that it has compared its residential building code regarding energy efficiency to the revised code and made a determination whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. (42 U.S.C. 6833(a)(5)(B)) State determinations are to be made: (1) After public notice and hearing; (2) in writing; (3) based upon findings included in such determination and upon evidence presented at the hearing; and (4) available to the public. (See, 42 U.S.C. 6833(a)(5)(C)) In addition, if a State determines that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons, which are to be made available to the public. (See, 42 U.S.C. 6833(a)(5)(C))

### *B. Background*

The ICC's IECC establishes a national model code for energy efficiency requirements for buildings. In 1997, the Council of American Building Officials (CABO) was incorporated into the ICC and the MEC was renamed to the IECC. A previous **Federal Register** notice, 59 FR 36173, July 15, 1994, announced the Secretary's determination that the 1993 MEC increased energy efficiency relative to the 1992 MEC for residential buildings. Similarly, another **Federal Register** notice, 61 FR 64727, December 6, 1996, announced the Secretary's determination that the 1995 MEC is an improvement over the 1993 MEC. **Federal Register** notice 66 FR 1964, January 10, 2001, simultaneously announced the Secretary's determination that the 1998 IECC is an improvement over the 1995 MEC and the 2000 IECC is an improvement over the 1998 IECC. **Federal Register** notice 76 FR 42688, July 19, 2011, announced the Secretary's determination that the 2003 IECC was not a substantial improvement over its predecessor, while the 2006 and 2009 editions were a substantial improvement over its predecessors. A map depicting the

status of State residential building codes is available at: *http://www.energycodes.gov/states/maps/residentialStatus.stm.*

On October 19, 2011, **Federal Register** 76 FR 64924 announced the Secretary's preliminary determination that the 2012 edition of the IECC should receive an affirmative determination under Section 304(a) of ECPA. A thirty-day public comment period concluded on November 18, 2011.

*C. Public Comments on the Preliminary Determination*

DOE received four sets of public comments on the preliminary determination for the 2012 IECC. Comments were received from the Responsible Energy Code Alliance (RECA), the Natural Resources Defense Council (NRDC), and the Coalition for Fair Energy Codes (CFEC), and Pilkington North America (PNA)/ACG Glass Company North America (AGC). However, DOE notes that PNA/AGC's comment was received late. Although the comment was filed late this final determination is not contrary to any of the issues raised in the comment.

- RECA provided three general comments of support for the preliminary determination on the 2012 IECC, three specific comments on the preliminary determination, and a list of recommended next steps.
- NRDC provided two general comments supporting DOE's determination efforts and DOE's preliminary determination of the 2012 IECC, and a recommendation that DOE continue its efforts in development, adoption, and implementation of strong building energy codes.
- CFEC provided general support for the conclusion of the preliminary determination, but also raised five specific points regarding the treatment of wood products in the 2012 IECC.

Overall, a total of 18 individual comments were received. These eighteen comments may be divided into 6 major categories:

(1) Support and Agreement—8 comments
(2) Alternate U-factors, Codes, and Approaches—3 comments
(3) Recommendations—3 comments
(4) SHGC requirements in Climate Zone 4—1 comment
(5) Performance Path—2 comments
(6) DOE's 30% Improvement Goal for the 2012 IECC—1 comment

Support and Agreement

In their general comments, RECA, NRDC, and CFEC all expressed agreement with DOE's conclusion that the 2012 IECC on the whole, would result in a significant improvement in energy efficiency as compared to previous versions of the IECC. Specifically, RECA stated ''first and foremost, we fully agree with the Department's conclusion that the 2012 IECC represents a 'significant improvement' overall, as compared to the 2009 IECC.'' (RECA, No. 1 at p. 2) NRDC stated ''NRDC agrees with and supports the Department's preliminary determination that the 2012 IECC saves energy compared to the 2009 IECC.'' (NRDC, No. 2 at p. 1) CFEC stated ''we do not disagree with the overall determination contained in the Notice * * *'' (CFEC, No. 1 at p. 2)

A general comment from RECA and a recommendation from NRDC expressed support for DOE efforts in adoption of and compliance with model energy codes. RECA also expressed support for DOE's intent to make the state certification process more transparent. Specifically, RECA commented ''we are also encouraged by the Department's recent efforts in promoting adoption and compliance with the model energy codes nationwide, and support the Department's plans in the preliminary determination to make compliance with certification statements more transparent.'' (RECA, No. 3 at p. 2) NRDC stated ''NRDC urges DOE to continue to take steps to promote the development, adoption, and implementation of strong building energy codes, including issuing timely code determinations.'' (NRDC, No. 4 at p. 2)

RECA also expressed agreement with the Department that the thermal envelope requirements of the IECC have been improved in nearly every aspect in the 2012 edition. (RECA, No. 4 at p. 3) RECA also stated that this was not just a matter of better windows and more insulation. The 2012 IECC also includes more efficient ducts and whole building leakage testing. DOE notes that these aspects of the 2012 IECC were discussed in the preliminary determination in the section entitled ''Discussion of Changes in the 2012 IECC Compared with the 2009 IECC Summary'' and again under ''Changes in the 2012 IECC that are Estimated to Increase Energy Efficiency''. DOE accepts this comment as already discussed in the preliminary determination. The discussion of changes in the 2012 IECC is also included in today's final determination.

Alternate U-factors, Codes, and Approaches

CFEC made 3 comments related to alternate U-factors, Codes, and Approaches they felt should be included in the determination. Specifically, CFEC stated that ''DOE should recognize other prescriptive wall configurations based on equivalent energy performance, calculated from the least restrictive of either the prescriptive R-value table [Table R402.1.1] or U-factor table [Table R402.1.3] in the IECC.'' (CFEC, No. 3 at p. 2) In response to this comment, DOE notes that the content of the 2012 IECC is the result of the ICC process. DOE also notes that this is again a matter of implementation materials rather than a subject for this determination, which is focused solely on whether the 2012 IECC improves energy efficiency relative to the 2009 IECC. One of the main pieces of support material DOE does provide is the RES*check* software and alternative U-factors are handled in RES*check.*

CFEC also commented that DOE should ''[r]ecognize in the Determination Statement that using a U = 0.061 in calculations in accordance with the Total $U_A$ alternative in Climate Zone 4 and 5 results in equivalent energy efficiency performance as it is equivalent to the U-factor derived from the prescriptive table.'' (CFEC, No. 4 at p. 2) In response, DOE acknowledges that there are potential differences in the U-factor and R-value tables based on construction details used in actual buildings for the 2012 IECC, but DOE notes that CFEC's comment takes issue with the content of the 2012 IECC. As noted above, the purpose of this determination is to compare the latest version of the IECC with the previous version and to determine if the latest version improves the level of energy efficiency in residential buildings over the previous version.

CFEC also commented that DOE should ''[r]ecognize in the Determination Statement that a performance approach that accounts for equipment which is more efficient than federally mandated minimums may result in equivalent or better energy efficiency performance than is required by the IECC 2012.'' (CFEC, No. 5 at p. 3) DOE notes that CFEC's comment takes issue with the contents of the 2012 IECC. Again, this comment is beyond the scope of the determination as required under ECPA.

Recommendations

RECA commented that ''RECA encourages the Department to move quickly to finalize this determination in order to start the two-year period for state compliance.'' (RECA, No. 7 at p. 8) RECA also provided a series of recommended next steps, including:

- Follow up on state requirements;

• Produce support materials and copies of code books to promote state adoption of the 2012 IECC;
• Update compliance materials (including RES*check*) to reflect the 2012 IECC; and
• Continue to offer incentives for leading states;
• Set the 2012 IECC as the standard/baseline for future codes activities.

(RECA, No. 8 at p. 8)

NRDC made similar recommendations that DOE ''continue to take steps to promote the development, adoption, and implementation of strong building energy codes, including issuing timely code determinations.'' (NRDC, No. 4 at p. 2) DOE agrees with both RECA's and NRDC's recommendations and notes that it is already planning to follow up with the states on their obligations under the determination process once this determination is finalized. Once this determination is finalized, the 2012 IECC will serve as the baseline for future code activities at DOE. DOE routinely produces and updates support materials for new codes and these materials can be found at *www.energycodes.gov.*

SHGC Requirements in Climate Zone 4

DOE received a comment supporting the change to the SHGC requirements in climate zone 4. Specifically, RECA supported the requirement for a maximum solar heat gain coefficient (SHGC) of 0.40 for glazed fenestration in climate zone 4 of the 2012 IECC, and disagrees with the Department's preliminary conclusion that energy efficiency improvement from 0.40 SHGC in climate zone 4 is ''unclear.'' (RECA, No. 6 at p. 5) RECA continued their comment by stating ''While we agree with the Department that the 0.40 SHGC requirement in climate zone 4 could increase heating load in some cases, cooling loads will also be reduced. Depending on the assumptions made and given the limits on typical building performance analysis, the direct calculated energy savings impact from this requirement is likely small and varies from location to location. However, this requirement is an improvement based on the other energy efficiency benefits it brings. Specifically, the new provision yields savings from lower peak electric demands and reduced energy use during peak periods, may allow for smaller air conditioners to be installed, and potentially increased occupant comfort on hot sunny days.'' DOE agrees with RECA that lower peak electric demand, reduced energy use during peak periods, reduced cooling equipment size, and the potential for increased occupant comfort on hot summer days are all significant aspects of this requirement. However, DOE's determinations of energy savings on the model energy codes are focused strictly on whether or not the new version of the code saves energy when compared to the previous version and these considerations are therefore not relevant to this determination. DOE stands by its statement that it is ''unclear'' if this requirement saves energy in climate zone 4. Whether or not this change does save energy depends greatly on other assumptions made about the how the home is designed and operated and the specific location of the home in climate zone 4. These assumptions are not part of today's determination, but would be on a particular home.

Performance Path

RECA commented that ''improvements to the assumptions in the performance path will lead to more energy efficiency and better enforcement, and as such, these improvements should be viewed as positive improvements in energy efficiency.'' (RECA, No. 5 at p. 4) RECA discussed two specific parts of the performance path—interior shading assumptions and the baseline heating system for electrically heated homes. Specifically, RECA asserted that the new treatment of interior shading in the performance path is an improvement. DOE acknowledges that there were changes in the performance path and in fact does discuss these changes in the preliminary determination. The change in treatment of interior shading does represent the latest research on this topic. DOE also acknowledges that properly quantifying the impact of interior shading is important for the performance approach. However, as stated in the preliminary determination and again in today's final determination, DOE also believes that the true impact of this change on homes remains nuanced and difficult to generalize, but is expected to be small. DOE notes that impact of this particular assumption depends on a number of other parameters of the building being modeled, including (but not limited to): The specific areas, distribution, and orientation of glazing in the home in question; whether the home has overhangs and other exterior shadings; how internally dominated the home is (a function of surface-to-volume ratio, aspect ratio, etc.); and the ratio of heating to cooling loads in the specific location of the home.

RECA also commented that ''the baseline assumption for electric heating of an electric heat pump is not so much a ''penalty'' on electric resistance heating as a clarification of the intent of the 2009 IECC.'' (RECA, No 5. at p. 4) In response, DOE believes that the baseline assumption of a heat pump for homes using electric resistance heating will be harder for homes with electric resistant heating to comply with under the whole building compliance path in the 2012 IECC than it would be for that same home under the 2009 IECC. RECA also commented that they view this change as a clarification to the ''traditional use of a heat pump as the baseline in the Standard Reference Design for electric heated homes''. DOE agrees that the 2006 IECC used heat pumps as the baseline. However, the heat pump baseline was not included in the 2009 IECC. DOE's role in determinations is to compare the latest version of the IECC with the previous version and to determine if the latest version improves the level of energy efficiency in residential buildings over the previous version. Therefore, DOE's final determination is based on the comparison between the 2009 IECC and the 2012 IECC.

CFEC also commented that DOE should ''Recognize in the Determination Statement a performance approach that calculates energy savings when less than 15% of wall area contains windows.'' (CFEC, No. 6 at p. 3) DOE assumes the basis of this comment is the fact that the Simulated Performance Alternative in the 2012 IECC does not provide ''credit'' for homes with less than 15% of conditioned floor area in windows. In response, DOE notes that CFEC's comment takes issue with the content of the 2012 IECC. DOE's role in determinations is to compare the latest version of the IECC with the previous version and to determine if the latest version improves the level of energy efficiency in residential buildings over the previous version. DOE also notes that the provisions in the 2012 IECC with regards to window area in the performance approach are identical to those in the 2009 IECC.

DOE's 30% Improvement Goal for the 2012 IECC

CFEC commented that ''DOE should explicitly recognize in the Determination Statement that the use of greater levels of insulation in Climate Zone 3 above R13 is not necessary to achieve the 30% improvement goal that DOE has established. As the proponent of IECC code change EC13–09/10 Parts I and II, to overhaul the residential energy provisions of the IRC and IECC, DOE did not propose to change Climate Zone 3 from R13 to either R20 or R13+5 ci.'' (CFEC, No. 2 at p. 2) In response, DOE notes that CFEC's comment takes

issue with the content of the 2012 IECC. DOE's role in determinations is to compare the latest version of the IECC with the previous version and to determine if the latest version improves the level of energy efficiency in residential buildings over the previous version.

*D. DOE's Final Determination Statement*

The 2012 IECC has a substantial variety of revisions compared to the 2009 IECC. Most of these revisions appear to directly improve energy efficiency that, on the whole, would result in a significant improvement in efficiency to homes built to the code. Therefore, the Department concludes that the 2012 edition of the IECC receives an affirmative determination under Section 304(a) of ECPA.

**II. Discussion of Changes in the 2012 IECC Compared With the 2009 IECC Summary**

The 2012 IECC appears to improve residential energy efficiency with respect to the 2009 IECC. Based on DOE's analysis, a preponderance of major energy efficiency improvements more than offset a small number of changes which have unclear or negative impacts on energy efficiency. The major changes that are estimated to improve energy efficiency in new homes built to comply with the code in most climate zones include:

- Building thermal envelope improvements
  - Increases in prescriptive insulation levels of walls, roofs and floors
  - Decrease (improvement) in U-factor allowances for fenestration
  - Decrease (improvement) in allowable Solar Heat Gain Coefficient (SHGC) for fenestration in warm climates
- Infiltration control: Mandated whole-house pressure test with strict allowances for air leakage rates
- Wall insulation when structural sheathing is used
- Ventilation fan efficiency
- Lighting—Increased fraction of lamps required to be high-efficacy
- Air distribution systems—leakage control requirements
- Hot water pipe insulation and length requirements
- Skylight definition change
- Penalizing electric resistance heating in the performance compliance path
- Fireplace air leakage control
- Insulating covers for in-ground spas
- Baffles for attic insulation

Changes that appear to decrease residential efficiency in some situations include the following.

- Steel-framed wall insulation
- Air barrier location

Changes whose effect is unclear:

- Fenestration SHGC requirement in climate zone 4
- Interior shading assumptions in the performance compliance path

All of the changes that are estimated to positively or negatively impact energy efficiency are discussed in the following text.

*A. Changes in the 2012 IECC That Are Estimated To Increase Energy Efficiency*

Building Thermal Envelope Improvements

Table R402.1.1 which specifies prescriptive envelope requirements, has been extensively modified in the 2012 IECC compared to the 2009 IECC. This table represents the code's primary regulation of a home's envelope thermal resistance, or the resistance of the ceilings, walls, windows, and floors to the transfer of heat into or out of the home. The criteria are expressed as either R-values (Btu/h-ft$^2$-F), which quantify a building component's resistance to heat flow, or U-factors (h-ft$^2$-F/Btu), which are the inverse of R-values and represent a component's thermal conductance. A higher R-value or a lower U-factor represents an efficiency improvement. Table R402.1.1 also includes requirements for glazed fenestration solar heat gain coefficients (SHGC) in the southern and central climate zones. In a cooling-dominated climate, a lower SHGC will almost always reduce a home's annual energy consumption.

Table 1 below shows the changes in the code's required R-values and U-factors by climate zone. Additionally, Table R402.1.3 has an improvement for fenestration U-factor in climate zone 1 from 1.20 in the 2009 IECC to 0.50 in the 2012 IECC. DOE has preliminarily determined that every change in the code's table represents an improvement in efficiency. Table 2 below shows the increase in required thermal resistance for each building component type weighted by climate zone.

For the fenestration U-factor, the code has increased the required thermal resistance by an average of 26.7%. In climate zone 1, Table R402.1.1 appears to revert from a required U-factor of 1.2 to NR (no requirement). This, however, should have no effect on the energy efficiency of the code because the U-factor of a minimally efficient single-pane window meets the requirement of 1.2. Seen in this light, the change to NR is really a clarification, rather than an actual change. The U-factor requirements for skylights in the 2012 IECC would reduce allowable heat loss through skylights an average of 12.6% compared to the 2009 IECC.

For glazed fenestration the allowable solar heat gain coefficient (SHGC) has been lowered, reducing solar heat gain by 17% in the cooling-dominated climate zones (1–3).

Four climate zones (2 through 5) were affected by more stringent insulation requirements in ceilings. Required R-values increased by 27% to 29% in these zones. However, accounting for the thermal bridging effects of typical wood framing members, DOE has preliminarily determined that the changes in the code represent a weighted average increase of 12.2% in the thermal resistance of ceilings.

For wood frame walls, the code allows a choice in some climate zones of a single value for insulation in the cavity between wall studs, or two values: One for cavity insulation and one for additional continuous insulation applied to the interior or exterior of the wall. Accounting for thermal bridging effects, and choosing the least thermally resistive of the two options, the 2012 code is estimated to improve thermal resistance of wood-frame walls an average of 13.7%. Mass wall (e.g., concrete, concrete block, log) R-value requirements increased by an average of 33.4%. Basement wall and crawl space wall R-values increased by 14.5% and 17.6%, respectively.

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## Table 1: Changes in insulation and U-factors for prescriptive (Table R402.1.1) path in the 2012 IECC

| Climate Zone | Fenest. U-Factor | Skylight U-Factor | Glazed Fenest. SHGC | Ceiling R-Value | Wood Frame Wall R-Value | Mass Wall R-Value | Floor R-Value | Basement Wall R-Value | Slab R-Value & Depth | Crawl Wall R-Value |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | ~~1.20~~ NR | 0.75 | ~~0.3~~ 0.25 | 30 | 13 | 3/4 | 13 | 0 | 0 | 0 |
| 2 | ~~0.65~~ 0.40 | ~~0.75~~ 0.65 | ~~0.3~~ 0.25 | ~~30~~ 38 | 13 | 4/6 | 13 | 0 | 0 | 0 |
| 3 | ~~0.50~~ 0.35 | ~~0.65~~ 0.55 | ~~0.3~~ 0.25 | ~~30~~ 38 | ~~13~~ 20 or 13+5 | ~~5/8~~ 8/13 | 19 | 5/13 | 0 | 5/13 |
| 4 except Marine | 0.35 | ~~0.60~~ 0.55 | ~~NR~~ 0.40 | ~~38~~ 49 | ~~13~~ 20 or 13+5 | ~~5/10~~ 8/13 | 19 | 10/13 | 10, 2 ft | 10/13 |
| 5 and Marine 4 | ~~0.35~~ 0.32 | ~~0.60~~ 0.55 | NR | ~~38~~ 49 | 20 or 13+5 | 13/17 | 30 | ~~10/13~~ 15/19 | 10, 2 ft | ~~10/13~~ 15/19 |
| 6 | ~~0.35~~ 0.32 | ~~0.60~~ 0.55 | NR | 49 | ~~20 or 13+5~~ 20+5 or 13+10 | 15/~~19~~ 20 | 30 | 15/19 | 10, 4 ft | ~~10/13~~ 15/19 |
| 7 and 8 | ~~0.35~~ 0.32 | ~~0.60~~ 0.55 | NR | 49 | ~~21~~ 20+5 or 13+10 | 19/21 | 38 | 15/19 | 10, 4 ft | ~~10/13~~ 15/19 |

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TABLE 2—NATIONAL AVERAGE INCREASE IN THERMAL RESISTANCE FOR LOWEST REQUIRED INSULATION LEVEL BY BUILDING COMPONENT

| Building component | Increase in thermal resistance of required insulation (percent) |
|---|---|
| Fenestration | 26.7 |
| Skylights | 12.6 |
| Ceiling | 18.2 |
| Wood Frame Wall | 13.7 |
| Mass Wall [1] | 33.4 |
| Basement Wall [1] | 14.5 |
| Crawl Space Wall [1] | 17.6 |

[1] There are two R-value options in the IECC. The first R-value option is used for this comparison. For mass walls, this first value applies when less than half of the insulation is on the interior of the mass wall, the case for which the code allows a greater reduction in required R-value due to the beneficial effects of thermal mass. The second number is more similar to wood frame wall requirements. For basement and crawl space walls, this first value applies for continuous insulation on the interior or exterior of the wall, whereas the second value is for insulation in cavities between studs or furring strips. In this case the two values represent approximately similar overall thermal resistance.

The 2012 IECC specifies that insulation R-values conform to the requirements of Table R402.1.1 even if the insulation must be compressed to fit within the available cavity. This clause primarily affects some nominal R–19 fiberglass batts that are designed for floor and/or ceiling applications where the available cavity is greater than the 5.5 inches typically available in a 2×6 wall. However, the 2012 edition has no prescriptive requirements that exactly require R–19 in wall cavities, so it is expected that there is no direct impact on energy savings.

### Infiltration Control

Section 402.4.1.2 contains a new provision for a mandatory whole-house pressure test to determine the envelope air leakage rate (the test was optional in the 2009 IECC). The maximum allowable air leakage rate is 5 air changes/hour when tested at a pressure difference of 50 Pascals (5 ACH50) in climate zone 1 and climate zone 2; and 3 air changes/hour (3 ACH50) in climate zones 3–8. The 2009 IECC specified a maximum of 7 ACH50 when the optional test was used, or directed the building official to inspect the envelope against a detailed checklist when the test was not used. The lower allowed leakage rate of the 2012 IECC is expected to save energy, and the mandatory test will likely result in improved energy efficiency in homes that would have had higher leakage rates as a result of leaks that would not be detected by visual inspection.

Mechanical ventilation systems can be used to provide fresh air from the outdoors to a home. The 2009 IECC does not require any mechanical ventilation. Section R403.5 of the 2012 IECC refers to the 2012 International Residential Code and International Mechanical Code which, in tandem with the 2012 IECC, require that a mechanical ventilation system meet these requirements or other approved means of ventilation in new homes.

### Wall Insulation When Structural Sheathing Is Used

Footnote h to Table R402.1.1 allows certain reductions in the required R-value of continuous insulation on walls that use structural sheathing (e.g., plywood, OSB) for shear bracing. The footnote is relevant only when there is a mixture of structural and insulating sheathing on the wall(s). The 2009 IECC states: *''First value is cavity insulation, second is continuous insulation, so ''13+5'' means R–13 cavity insulation plus R–5 insulated sheathing. If structural sheathing covers 25 percent*

*or less of the exterior, insulating sheathing is not required in the locations where structural sheathing is used. If structural sheathing covers more than 25 percent of exterior, structural sheathing shall be supplemented with insulated sheathing of at least R–2.''*

The footnote has the effect of suspending the continuous R-value requirement for portions of the wall covered with structural sheathing, provided those portions represent 25% or less of the wall area. If structural sheathing covers more than 25% of the wall, the structural portions must be augmented with additional insulating sheathing of at least R–2. The 2012 IECC states: *''First value is cavity insulation, second is continuous insulation, so ''13+5'' means R–13 cavity insulation plus R–5 continuous insulation. If structural sheathing covers 40 percent or less of the exterior, continuous insulation R-value shall be permitted to be reduced by no more than R–3 in the locations where structural sheathing is used—to maintain a consistent total sheathing thickness.''*

The 2012 IECC allows a larger fraction of the wall (40% rather than 25%) to contain reduced continuous insulation but, unlike the 2009 IECC, does not allow elimination of continuous insulation. The 2012 IECC specifies substantially more continuous insulation layered on top of structural sheathing when the structural fraction exceeds the 40% threshold. It is estimated that the net effect is greater overall efficiency.

Ventilation Fan Efficiency

When installed to function as a whole-house ventilation system, the 2012 IECC specifies that mechanical fans meet the following requirements:

- Range Hoods and In-line fans: 2.8 cubic feet per minute cubic feet per minute (cfm)/watt
- Bathroom (10–90 cfm): 1.4 cfm/watt
- Bathroom (>90 cfm): 2.8 cfm/watt

Because the 2012 IECC places upper limits on the energy requirements for these fans where there were no such limits in the 2009 IECC, this change is expected to improve overall efficiency in residences.

Lighting

The requirement for high efficacy lamps has been increased from a minimum of 50% of the lamps in permanently-installed fixtures to a minimum of 75%. Further, the high efficacy lamp requirement has been changed from prescriptive to mandatory, meaning the specification cannot be lessened in trade for efficiency improvements elsewhere in the home. This change also addresses an aspect of the 2009 IECC under which the use of high-efficacy lamps is not specified when a building achieved compliance via the simulated performance compliance path. This is expected to improve the energy savings in the 2012 IECC by reducing lighting energy use. The 2012 IECC also added an option for calculating the high-efficacy fraction based on a count of fixtures instead of individual lamps, a change not expected to change overall efficiency.

Section R404.1.1 in the 2012 IECC contains a new provision that bans continuously burning pilot lights on fuel-fired lighting. While the potential energy savings are limited due to the fringe application of this type of lighting, where applied, this rule would tend to increase energy savings by cutting standby energy use of the pilot light.

Air Distribution System

There are three key changes to requirements for air distribution systems that improve energy efficiency:

- A change to section R403.2.2.1 that places a limit on air leakage from air handlers. The change is to ensure that the air handler delivers the vast majority of the supply air downstream to the rest of the distribution system.
- Section R403.2.2 reduces maximum allowable levels of duct leakage in the distribution system compared to the 2009 IECC (from 12 cfm per 100ft$^2$ of conditioned floor area to 4cfm/100ft$^2$ for tests done on completed buildings, and from 6 to 4 cfm per 100ft$^2$ for tests done at the rough-in stage of construction).
- Section R403.2.3 now specifies that building framing cavities may not be used as supply ducts or plenums, which would eliminate the potential for air leaks into adjacent framing cavities and/or attics, crawlspaces, or unheated basements. This may also lessen the chance of an unbalanced distribution system.

DOE has determined that all of these changes will increase the energy savings of the 2012 edition of the IECC by delivering more of the conditioned air to where it is needed via a more efficient distribution system.

Hot Water Pipe Insulation and Length Requirements

Section R403.4.2 contains new specifications for noncirculating service hot water distribution systems that should reduce energy losses from ''stranded'' hot water and conduction of heat out of the pipes. The 2012 IECC specifies that all such pipes to be insulated unless they have sufficiently low volume as defined by a combination of their length (measured from the tank or distribution manifold to the point of use) and diameter. This change is expected to reduce the amount of hot water that cools off in the pipes and is thus wasted as users wait for sufficiently warm water to reach the fixture. Also, for circulating hot water systems, the required insulation has been increased from R–2 to R–3 and therefore should increase efficiency. A final change in the 2012 IECC requires that piping insulation be protected from the elements. Although primarily a durability concern, this change may save energy by reducing the incidence of damaged and/or missing insulation.

Skylight Definition Change

Previously, skylights were defined as any glazed fenestration at less than 75 degrees from horizontal. That definition has been changed in the 2012 IECC to be less than 60 degrees from horizontal. The effect of this change is to classify more glazing as vertical fenestration rather than skylights. Although the number of skylights in this slope range is small, because the U-factor requirements for vertical fenestration are more stringent than for skylights, this change is expected to improve the energy savings of the 2012 IECC.

Electric Resistance Heating in the Performance Path

Under the performance compliance path (Section R405), the 2012 IECC has modified the reference design for buildings with electric heating systems that do not use a heat pump, requiring that a heat pump be assumed in the standard reference design. Because of the efficiency of heat pumps as compared to other electric heating technologies, this code change is expected to increase the energy efficiency of the reference design, which would have the effect of specifying that the proposed design to be more energy efficient if it is to comply via this section and the proposed design has an electric heating system that is less efficient than a heat pump. Although this affects only homes with electric resistance heating, its effect is expected to be an improvement in efficiency if such homes comply via the performance method.

Fireplace Air Leakage Control

The 2012 IECC specifies that all fireplaces have tight-fitting flue dampers and gasketed doors (the 2009 IECC requires such only for wood-burning fireplaces). This is expected to result in very air-tight fireplaces which would

improve a home's air leakage characteristics. Therefore, this is deemed an improvement in efficiency for homes with fireplaces.

In-Ground Spas

Section R403.9 has been updated to include in-ground spas under the purview of the code, where previously only swimming pools were included. The change effectively requires in-ground spas to have insulating covers, which should lower energy losses. To the extent that these devices typically already have insulating covers this may have limited impact in terms of efficiency.

The 2012 IECC now specifies that log walls meet the requirements of ICC–400, a separate standard for log wall construction. Although this does not change the thermal requirements, it may result in better quality construction of log walls, which would improve energy performance by reducing air leaks and thermal bypasses.

Baffles for Attic Insulation

Section R402.2.3 now requires a wind wash baffle for vented attics. For air-permeable insulation, this should improve the effective insulation value of the ceiling by reducing wind-driven air movement and may in some cases prevent blown-in insulation from being displaced by wind. Therefore, this is an improvement in efficiency for attics.

*B. Changes in the 2012 IECC That Are Estimated To Decrease Energy Efficiency*

Steel-Framed Wall Insulation

The 2012 IECC modifies the IECC code's tables of steel-framed wall U-factor equivalences with wood-frame walls of various R-values in such a way that less efficient steel-framed walls will be deemed equivalent to a corresponding wood-frame wall in many cases. In the 2009 IECC, there was no distinction between homes with different steel stud spacing. In the 2012 IECC, there are now separate U-factor equivalences for studs with 16″ and 24″ spacing. The 16″ stud spacing requirements have two categories that are directly comparable to the 2009 IECC requirements: Walls with wood-frame R-values of R–13 or R–21. According to Table A3.3 of ASHRAE 90.1 2007, the 2009 IECC-required R-factors represent an equivalent U-factor for the wall assembly of 0.077 to 0.080 Btu/hr-ft$^2$-F, depending on the compliance option. This has been changed in the 2012 IECC to a range of 0.059–0.089 Btu/hr-ft$^2$-F. The average compliance option based on R–13 wood-frame walls represents a 5.4% higher U-factor. For R–21 wood-frame walls, the steel frame options previously represented U-factors of 0.054, whereas in the 2012 code, they represent U-factors of 0.056, a 3.1% increase.

Insulation equivalences in the 2012 IECC for steel walls with 24″ stud spacing are slightly more lax, reflecting the decreased thermal bridging effects, compared with 16″ stud spacing. Because the baseline for comparison for 24″ stud spacing in the 2009 IECC is still the general requirements that did not distinguish based on stud spacing, these new requirements represent higher increases in assembly U-factors than for 16″ stud spacing. Specifically, there is a 9.1% increase in assembly U-factors among the various insulation options for R–13 and an 11.8% increase for R–21. The steel-wood framing equivalences of the 2009 IECC and the 2012 IECC are compared below in Table 3. In this table, the first value is cavity insulation and the second is continuous insulation. For example, R–13+5 is R–13 cavity insulation plus R–5 continuous insulation.

Note that while the steel/wood equivalences have changed such that steel-stud walls may be less efficient than before in comparison to a particular wood-frame R-value, the base R-value requirements (expressed in terms of wood-frame walls) have substantially increased in climate zones 3, 4, 6, 7, and 8 which would result in energy savings in these zones even for steel framed walls. Because the number of homes with external walls with steel framing is small compared to wood-frame homes, this change is not expected to result in substantial overall efficiency losses in zones 1, 2, and 5.

TABLE 3—COMPARISON OF STEEL-FRAME WALL REQUIREMENTS BETWEEN THE 2009 AND 2012 IECC

| Steel Frame Spacing | 16″ stud spacing | | 24″ stud spacing | |
|---|---|---|---|---|
| Wood-Frame Requirement | R–13 | R–21 | R–13 | R–21. |
| 2009 IECC Options | R–0+10 or R13+5 or R–15+4 or R–21+3. | R–13+10 or R–19+9 or R–25+8. | R–13+5 or R–15+4 or R–21+3 or R–0+10. | R–13+10 or R–19+9 or R–25+8. |
| 2012 IECC Options | R–0+9.3 or R–13+4.2 or R–15+3.8 or R–19+2.1 or R–21+2.8. | R–0+14.6 or R–13+9.5 or R–15+9.1 or R–19+8.4 or R–21+8.1 or R–25+7.7. | R–0+9.3 or R–13+3 or R–15+2.4. | R–0+14 or R–13+8.3 or R–15+7.7 or R–19+6.9 or R–21+6.5 or R–25+5.9. |
| Average U-factor (2009) [1] | 0.079 | 0.054 | 0.063 | 0.04. |
| Average U-factor (2012) | 0.083 | 0.056 | 0.07 | 0.045. |
| Average U-factor Increase | 5.4% | 3.1% | 9.1% | 11.8%. |

[1] Calculated using ASHRAE 90.1–2007 Table A3.4.

Air Barrier Location

The 2012 IECC changes Table R402.4.1.1 by removing a requirement that air-permeable insulation be located inside the air barrier, allowing the insulation to be outside of the air barrier in the exterior envelope construction. By allowing air-permeable insulation to be located outside the air barrier this change may result in increased levels of outdoor air infiltration in the interstices of the insulation material. This would tend to reduce the effectiveness of the insulation. The magnitude of impact for this change, however, is expected to be minimal because an interior air barrier will still be effective at reducing air movement through the envelope and because the 2012 IECC's new mandate for a whole-house pressure test will ensure that total air leakage through the building envelope be kept at a low rate.

There is an additional change in the 2012 IECC that may reduce the energy efficiency of the code. In the 2009 IECC, the common wall between dwelling units of a multifamily or two-family structure was required to be air-sealed. In the 2012 IECC, this requirement has been removed. In practice, these common walls can provide a route for air leakage to the outdoors if they are coupled to attics, basements, crawlspaces, or other unconditioned spaces. Because multifamily represent a small fraction of low-rise residential dwelling units (about 15%) and because this change creates the potential for only

an indirect air movement path, DOE does not consider this change to be significant.

*C. Changes in the 2012 IECC That Have an Unclear Impact on Energy Efficiency*

Fenestration SHGC in Climate Zone 4

As presented in Table 1, the 2012 IECC changes SHGC specifications for climate zone 4 from no requirement (NR) to 0.4. Because climate zone 4 contains locations where the energy savings from increased solar heat gains in winter may more than offset increased energy use for air conditioning in summer, it is possible that a lower SHGC would increase energy use in some parts of the zone. However, the specified fenestration U-factor of 0.35 in both the 2009 and 2012 IECC usually implies the use of windows with low-emissivity coatings that have an SHGC of 0.4 or below even in the absence of a specific SHGC requirement. Therefore, DOE expects this change to have minimal impact either in terms of energy savings or energy losses.

Interior Shading Assumptions in the Performance Compliance Path

The 2012 IECC modifies internal shade fractions required as inputs to the performance compliance path. The 2009 IECC specified the following internal shade fractions for the reference design: Summer—0.70, Winter—0.85. These have been replaced in the 2012 IECC with the following equation for calculating interior shade fraction (ISF):

$$ISF = 0.92 - 0.21 \cdot SHGC$$

The impact of this change on the energy consumption of homes complying via the performance path is nuanced and difficult to generalize, but is expected to be small. Its primary impact is to modestly change the relative importance of cooling- and heating-oriented energy-saving features.

*D. Changes in the 2012 IECC That Do Not Affect Energy Efficiency*

Several changes were made to the IECC that do not directly affect energy efficiency. Table 4 details these changes, listing the section of the 2009 IECC to which the change was made, a description of the change, and an explanation why overall energy efficiency is not affected.

TABLE 4—CHANGES TO IECC THAT DO NOT AFFECT ENERGY EFFICIENCY

| Code section | Change | Comments |
|---|---|---|
| R202 | Clarifies that residential buildings covered by chapter 4 are one- and two-family dwellings, townhouses and multi-family residential (R–2) not over 3 stories in height above grade. | This change is only a clarification. |
| R202 | Definition of a whole-house ventilation system | Because whole-house ventilation systems are not yet required by the code, this new definition effects no real change to the code's requirements. |
| R401.3 | Results of an air leakage test must be documented on the certificate. | This change only affects the transparency of code compliance. |
| R202 and R303.1.3 | Introduction of "Visible Transmittance" (VT) for fenestrations. Default Visible Transmittances defined in Table. | The table only provides default VT values for certain window types. VT is not directly regulated by the code. |
| R402.4.4 | Clarification that recessed lighting must be labeled as having a leakage rate to ceiling cavity of <=2 cfm. | This is only a clarification of previous text. |
| Chapter 6 | Introduction of ASHRAE test procedure 193 for determining the air leakage rate for HVAC Equipment. | Provides a test procedure to enable compliance with a new requirement. |
| Chapter 5 | Introduction of test standard for home ventilation systems: HVI 916–09 Airflow Test Procedure. | Provides a test procedure to enable compliance with a new requirement. |
| Table R405.5.2(1) | Requirements for Proposed Design for Thermal Distribution Systems: Thermal distribution system efficiency shall be as tested or as specified by Table 405.5.2 if not tested. Duct insulation shall be as proposed. | This change is only a clarification. |
| R403.6 | Heating and cooling equipment shall be sized in accordance with ACCA Manual S based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies. | This moves this requirement directly into the IECC instead of referencing the IRC. |

## III. Filing Certification Statements With DOE

*A. State Determinations*

Based on today's final determination, each State is required to determine the appropriateness of revising, in full or in part, the portion of its residential building code regarding energy efficiency to meet or exceed the energy efficiency provisions of the 2012 IECC. (42 U.S.C. 6833(a)(5)(B)) The State determinations are required to be made not later than two years from today's date, unless an extension is provided. The State determination must be: (1) Made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in a newspaper of general circulation.

In evaluating the 2012 IECC, States should note that DOE's determination was based on an evaluation of the code as applied to new construction only. The scope of the 2012 IECC includes new construction as well as additions, alterations, renovations, or repairs to an existing building or building system, or portion thereof, as it relates to new construction as detailed in chapter 1, part 1 of the 2012 IECC. Chapter 1, part 1 of the 2012 IECC specifies the scope of the IECC as it pertains to existing buildings: The 2012 IECC does not require the unaltered portion(s) of the existing building or building system to comply with this code nor does the code require the removal, alteration or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of the IECC. Additionally, DOE notes that its determination was based on a comparison of energy efficiency

impacts only and did not take into consideration other factors such as cost, or health and safety. DOE provides States technical assistance to aid them in determining whether to update specific residential building codes. See *http://www.energycodes.gov/states/techAssist.stm.* In addition, funds provided through the State Energy Program, can be used to support code development consistent with a State's approved plan.

Section 304(a)(4) of ECPA, as amended, requires that if a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State must submit to the Secretary, in writing, the reasons for this determination and the statement shall be available to the public. (42 U.S.C. 6833(a)(4)) The reasons are to be sent to the address provided in the **ADDRESSES** section.

States should be aware that, consistent with IECC definitions, the Department considers high-rise (greater than three stories) multifamily residential buildings and hotel, motel, and other transient residential building types of any height as non-residential buildings for energy code purposes. Residential buildings include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multifamily buildings (not greater than three stories) such as condominiums and garden apartments.

States should also be aware that this final determination does not apply to IECC chapters specific to non-residential buildings as defined above. Therefore, today's final action requires that States must certify their evaluations of their State building codes for residential buildings with respect to all provisions of the IECC except for those chapters specific to non-residential buildings as defined above.

*B. Requests for Extensions To Certify*

Section 304(c) of ECPA, as amended, requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above, if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. (42 U.S.C. 6833(c)) Such demonstrations could include one or both of the following: (1) A plan for response to the requirements stated in Section 304; and/or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive. Requests are to be sent to the address provided in the **ADDRESSES** section.

## IV. Regulatory Analysis

*A. Review Under Executive Order 12866*

Today's action is a significant regulatory action under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735 (Oct. 4, 1993)). Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR. 53461 (Aug. 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 General Counsel's Web site: *http://www.gc.doe.gov.* Today's action on the final determination of improved energy efficiency between IECC editions requires States to undertake an analysis of their respective building codes. Today's action does not impact small entities. Therefore, DOE has certified that there is no significant economic impact on a substantial number of small entities.

*C. Review Under the National Environmental Policy Act of 1969*

DOE has determined that today's action is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to actions that are strictly procedural, such as rulemaking establishing the administration of grants. Today's action impacts whether States must perform an evaluation of State building codes. The action would not have direct environmental impacts. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

*D. Review Under Executive Order 13132, ''Federalism''*

Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's action and has determined that it will not pre-empt State law and 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. Today's action impacts whether States must perform an evaluation of State building codes. No further action is required by Executive Order 13132.

*F. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

Today's action impacts whether States must perform an evaluation of State

building codes. Today's action would not impose a Federal mandate on State, local or tribal governments, and it would not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

*G. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's action 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.

*H. Review Under the Treasury and General Government Appropriations Act of 2001*

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

*I. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated 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 the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. Review Under Executive Order 13175*

Executive Order 13175. ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249 (Nov. 9, 2000)), requires DOE to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' refers to regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Today's regulatory action is not a policy that has ''tribal implications'' under Executive Order 13175.

DOE has reviewed today's action under Executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

Issued in Washington, DC, on May 9, 2012.

**David T. Danielson,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012–12000 Filed 5–16–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. RF–022]**

### Publication of the Petition for Waiver From Sanyo E&E Corporation From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

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

**ACTION:** Notice of re-opening of public comment period.

**SUMMARY:** On April 2, 2012, the U.S. Department of Energy (DOE) published the Sanyo E&E Corporation (Sanyo) petition for waiver from the residential refrigerator and refrigerator-freezer test procedure. Comments were required to be submitted by May 2, 2012. This document announces that the period for submitting comments on the Sanyo petition for waiver is re-opened until June 18, 2012.

**DATES:** DOE will accept comments, data, and information regarding the Sanyo petition for waiver received no later than June 18, 2012.

**ADDRESSES:** Any comments submitted must identify the Sanyo E&E Corporation petition for waiver, and provide case number RF–022. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–022] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On April 2, 2012, DOE published the Sanyo petition for waiver from the residential refrigerator, refrigerator-freezer, and freezer test procedure in the **Federal Register** (77 FR 19654). The notice provided for the submission of comments by May 2, 2012. After the notice of petition for waiver was published, Sanyo provided DOE with

clarifications on certain items in its original petition, and requested that the comment period for its petition for waiver be extended so that commenters would have an opportunity to comment on the petition with these clarifications included. DOE is publishing Sanyo's request in its entirety. The request contains no confidential information. The request includes a suggested alternate test procedure to determine the energy consumption of Sanyo's specified hybrid refrigerators. To provide all manufacturers of domestically marketed units of the same product type additional time to submit comments on the additional information provided by Sanyo, DOE has determined that re-opening of the public comment period is appropriate and is hereby re-opening the comment period. DOE will consider any comments received by June 18, 2012 and deems any comments received between May 2, 2012 and June 18, 2012 to be timely submitted.

**Further Information on Submitting Comments**

Under 10 CFR part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Dated: Issued in Washington, DC, on May 9, 2012.

**Kathleen B. Hogan,**

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

**BEFORE THE U.S. DEPARTMENT OF ENERGY**

**Washington, DC 20585**

In the Matter of: SANYO E&E Corp., Petitioner).

Case Number: RF–022

***REQUEST FOR EXTENSION OF COMMENT DEADLINE***

SANYO E&E Corporation (''SEE'') submits this Request for Extension of Comment Deadline (''Request'') with respect to its Petition for Waiver (''Petition'') filed with the Department of Energy (''DOE'') on June 2, 2011. Notice of SEE's Petition was published in the April 2, 2012 **Federal Register** (Vol. 77, No. 63, p. 19654) (''Notice'') and the public comment period is currently scheduled to close on May 2, 2012. SEE respectfully requests that interested parties be granted thirty (30) additional days from the publication of this Request to file comments on SEE's Petition so that any commenters have sufficient time to provide a response incorporating the clarifications to the Petition SEE provides below. Granting the extension will not prejudice any interested parties, and will promote the efficient resolution of SEE's Petition.

**1. SEE's Proposed Alternative Testing Method For Its Hybrid Models**

As SEE explained in its Petition, which SEE incorporates herein, SEE's hybrid models contain design characteristics that prevent testing of the basic models according to the test procedures prescribed in 10 C.F.R. § 430, subpart B, appendix A1. Specifically, while the beverage compartment of these hybrid models is cable of achieving temperatures at or below 38 °F, the wine storage compartment of these single-cabinet units can only achieve a minimum temperature of 45 °F. As a result, it is impossible to test these hybrid models under DOE's current testing procedures, which mandate that energy consumption be measured when each compartment temperature is set at 38 °F.

In order to properly certify and rate these hybrid models, SEE proposed the following two formulas to measure the maximum allowable energy consumption of the wine storage and beverage compartments, respectively:

**Energy consumption of the wine storage compartment:**

$$EWine = \{ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)]\} * 0.85$$ [1]

**Energy consumption of the refrigerated beverage compartment:**

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (38\ °F - TBC1)/(TBC2 - TBC1)].$$

As SEE also explained, the K factor from CAN/CSA 300–08 6.3.1.2 and HRF–1–2007 8.7.2.1.1 was used because SEE's hybrid models will typically have a door-opening usage aligned with household freezers, and thus 0.85 was the employed K factor (correction factor). Further, to evaluate the models in a manner truly representative of their actual energy consumption characteristics, the standard temperature of single wine coolers (55 °F) for the wine storage compartment and the standard temperature (38 °F) for the refrigerated beverage compartment was used.[2]

Applying these proposals, and in accordance with 10 C.F.R. § 430, subpart B, Appendix A1, SEE hybrid model MBCM24FW, which would be classified as a compact refrigerator with automatic defrost without through-the-door ice service and which has a total adjusted volume of 5.75 cubic feet, would have a maximum allowable annual energy usage of 436 kWh/year. Similarly, SEE hybrid models JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, and KBCS24RS, which would also be classified as compact refrigerators with automatic defrost without through-the-door ice service and which have a total adjusted volume of 5.41 cubic feet, would have a maximum allowable annual energy usage of 431 kWh/year.

**2. Clarification Of SEE Proposed Alternative Testing Method**

In its Notice, DOE stated that ''[w]e also note that the energy consumption of the basic models detailed in Sanyo's

[1] SEE clarifies here that the .85 correction factor should be applied to the entire formula for the wine storage compartment, $\{ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)]\}$.

[2] As DOE itself noted in its Framework Public Meeting for Wine Chillers and Miscellaneous Refrigeration Products, the Association of Home Appliance Manufacturers, the California Energy Commission, and Natural Resources Canada ''all use a standardized compartment temperature of 55 °F'' and a .85 K factor. Framework at pp. 34–35, available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/wc_fw_meeting_presentation_draft.pdf.* In the absence of an existing federal standard, SEE accordingly employed these prevailing standards in its proposed alternative testing method with respect to the wine storage compartment of SEE's hybrid models.

petition suggests that these products, when tested in accordance with the alternate test procedure Sanyo is requesting to use, would appear to use an amount of energy that exceeds the energy conservation standards for the likely product classes that would apply.'' Notice at 19655. SEE apologizes for any confusion caused by the proposed formulas in its Petition, as SEE did not mean to suggest that 436 kWh/year and 431 kWh/year were the actual energy consumption values for the applicable hybrid models. Rather, SEE was attempting to demonstrate that these energy consumption figures would be the theoretical maximum allowable annual values under SEE's proposed alternative testing method. In order to avoid further confusion, SEE provides below a more detailed explanation as to how it derived these maximum allowable values.

With respect to basic model MBCM24FWBS, the total adjusted volume of the beverage compartment is 2.8 cubic feet, while the total adjusted volume of the wine storage compartment is 2.95 cubic feet, for a total adjusted volume of 5.75 cubic feet. To calculate the maximum allowable annual energy consumption figure, however, SEE first calculated the maximum allowable energy consumption of this model as if it were entirely governed by the class 13 all-refrigerator standard, and then calculated the maximum allowable energy consumption figure as if it were entirely governed by the current CAN/CSA–C300–08 type 20 wine chiller standard:

**10 CFR 430.32 class 13 all-refrigerator:** 12.70 × 5.75 + 355 kWh/year = 428 kWh/year

**CAN/CSA–C300–08 type 20 wine chiller:** 17.4 × 5.75 + 344 kWh/year = 444 kWh/year

SEE then took the weighted average of these figures based upon the actual total adjusted volume of the beverage compartment (2.8 cubic feet) and the wine storage compartment (2.95 cubic feet) to derive the proposed maximum allowable energy consumption figure contained in its Petition:

**Combined standard:** (428 kWh/year × 2.8/5.75) + (444 kWh/year × 2.95/5.75) = 436 KWh/year

With respect to basic models JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, and KBCS24RS, SEE derived the maximum allowable energy consumption figure in the same manner, with the only difference being that the total adjusted volume of the wine storage compartment is 2.61 cubic feet for these basic models (the beverage compartment for these basic models is also 2.8 cubic feet), for a total adjusted volume of 5.41 cubic feet:

**10 CFR 430.32 class 13 all-refrigerator:** 12.70 × 5.41 + 355 kWh/year = 424 kWh/year

**CAN/CSA–C300–08 type 20 wine chiller:** 17.4 × 5.41 + 344 kWh/year = 438 kWh/year

**Combined standard:** (424 kWh/year × 2.8/5.41) + (438 kWh/year × 2.61/5.41) = 431 kWh/year

Thus, the 436 kWh/year and 431 kWh/year figures reflect the weighted average of the maximum allowable energy consumption standard pertaining to class 13 all-refrigerators, as applied to SEE's hybrid models' beverage compartment, and the CAN/CSA–C300–08 type 20 standard for wine chillers, as applied to SEE's hybrid models' wine storage compartment. SEE realizes that the bases for these figures may not have been entirely clear from SEE's Petition, and therefore SEE respectfully requests that DOE publish this clarification in order to provide interested parties with a more thorough understanding of how SEE derived its proposed alternative testing method and related maximum allowable energy consumption figures. SEE further requests that interested parties be granted thirty (30) additional days from the publication of this Request to file comments on SEE's Petition so that interested parties have sufficient time to provide a proper response without the need for an additional round of comments.

If DOE requires any additional information to properly consider SEE's Petition, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s

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April 20, 2012

[FR Doc. 2012–11998 Filed 5–16–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12968–001]**

### City of Norwich Department of Public Utilities; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Connecticut State Historic Preservation Officer (hereinafter, Connecticut SHPO), and the Advisory Council on Historic Preservation (hereinafter, Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 U.S.C. section 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of a new license for the Scotland Hydroelectric Project No. 12968–001.

The programmatic agreement, when executed by the Commission and the Connecticut SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Scotland Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

City of Norwich Department of Public Utilities, as the competitor applicant for the Scotland Hydroelectric Project No.

[1] 18 CFR section 385.2010.

12968, and the Mashantucket Pequot Tribe of Connecticut have expressed an interest in this preceding and are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

John Eddins or Representative, Office of Planning and Review, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., Suite 803, Washington, DC 20004

Daniel Forrest or Representative, Archaeologist/Environmental Review Coordinator, Historic Preservation and Museum Division, One Constitution Plaza, 2nd Floor, Hartford, CT 06103

John F. Bilda or Representative, Norwich Public Utilities, 16 South Golden Street, Norwich, CT 06360

Kathleen Knowles or Representative, Tribal Historic Preservation Officer, Mashantucket Pequot Tribe of Connecticut, 550 Trolley Line Blvd., Mashantucket, CT 06338–3202

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

Any such motions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''eComment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–12968–001) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15-day period.

Dated: May 10, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–11824 Filed 5–16–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9517–1]**

## Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR Number 1695.11; Emissions Certification and Compliance Requirements for Nonroad Spark-ignition Engines (Transfer Burden from 2060–0603); 40 CFR parts 1048, 1051, 1065 and 1068; was approved on 04/03/2012; OMB Number 2060–0338; expires on 08/31/2012; Approved without change.

EPA ICR Number 1957.06; NESHAP for Metal Coil Surface Coating Plants; 40 CFR part 63 subparts A and SSSS; was approved on 04/04/2012; OMB Number 2060–0487; expires on 04/30/2015; Approved without change.

EPA ICR Number 1831.05; NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese; 40 CFR part 63 subparts A and XXX; was approved on 04/04/2012; OMB Number 2060–0391; expires on 04/30/2015; Approved without change.

EPA ICR Number 2381.02; ICR for the Final Rule entitled ''Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program''; 40 CFR part 745; was approved on 04/06/2012; OMB Number 2070–0181; expires on 04/30/2015; Approved with change.

EPA ICR Number 2294.03; NESHAP for Plating and Polishing Area Sources; 40 CFR part 63 subparts A and WWWWWW; was approved on 04/12/2012; OMB Number 2060–0623; expires on 04/30/2015; Approved without change.

EPA ICR Number 1983.06; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex; 40 CFR part 63 subparts A and YY; was approved on 04/12/2012; OMB Number 2060–0489; expires on 04/30/2015; Approved without change.

EPA ICR Number 1669.06; Lead-Based Paint Pre-Renovation Information Dissemination—TSCA Sec. 406(b); 40 CFR part 745 subpart E; was approved on 04/20/2012; OMB Number 2070–0158; expires on 04/30/2015; Approved without change.

EPA ICR Number 2258.03; PM 2.5 NAAQS Implementation Rule (Renewal); 40 CFR 51.1000–51.1012; was approved on 04/19/2012; OMB Number 2060–0611; expires on 04/30/2015; Approved with change.

EPA ICR Number 2159.05; Background Checks for Contractor Employees (Renewal); 5 CFR parts 731, 732 and 736; was approved on 04/24/2012; OMB Number 2030–0043; expires on 04/30/2015; Approved without change.

EPA ICR Number 0969.09; Final Authorization for Hazardous Waste Management Programs (Renewal); 40 CFR 271.5–271.8, 271.20, 271.21 and 271.23; was approved on 04/24/2012; OMB Number 2050–0041; expires on 04/30/2015; Approved without change.

EPA ICR Number 2183.05; Drug Testing for Contractor Employees (Renewal); 5 CFR parts 731, 732 and 736; was approved on 04/24/2012; OMB Number 2030–0044; expires on 04/30/2015; Approved without change.

EPA ICR Number 1352.12; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal); 40 CFR part 370; was approved on 04/24/2012; OMB Number 2050–0072; expires on 04/30/2015; Approved with change.

EPA ICR Number 1608.06; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive * * *; 40 CFR parts 239, 257

and 258; was approved on 04/24/2012; OMB Number 2050–0152; expires on 04/30/2015; Approved without change.

EPA ICR Number 2002.05; Cross-Media Electronic Reporting and Recordkeeping Rule (Renewal); 40 CFR part 3; was approved on 04/24/2012; OMB Number 2025–0003; expires on 04/30/2015; Approved without change.

EPA ICR Number 2303.03; NESHAP for Ferroalloys Production Area Sources; 40 CFR part 63 subparts A and YYYYYY; was approved on 04/24/2012; OMB Number 2060–0625; expires on 04/30/2015; Approved without change.

EPA ICR Number 1658.07; Control Technology Determination for Constructed or Reconstructed Major Sources of Hazardous Air Pollutants; 40 CFR part 63 subpart B; was approved on 04/24/2012; OMB Number 2060–0373; expires on 04/30/2015; Approved without change.

EPA ICR Number 1055.10; NSPS for Kraft Pulp Mills; 40 CFR part 60 subparts A and BB; was approved on 04/24/2012; OMB Number 2060–0021; expires on 04/30/2015; Approved without change.

EPA ICR Number 1789.07; NESHAP for Natural Gas Transmission and Storage; 40 CFR part 63 subparts A and HHH; was approved on 04/24/2012; OMB Number 2060–0418; expires on 04/30/2015; Approved without change.

EPA ICR Number 2207.04; Exchange Network Grants Progress Reports (Renewal); was approved on 04/24/2012; OMB Number 2025–0006; expires on 04/30/2015; Approved without change.

EPA ICR Number 2137.06; NESHAP for Coal- and Oil-fired Electric Utility Steam Generating Units; 40 CFR part 63 subparts A and UUUUU; was approved on 04/25/2012; OMB Number 2060–0567; expires on 04/30/2015; Approved without change.

EPA ICR Number 1710.06; Residential Lead-Based Paint Hazard Disclosure Requirements (Renewal); 24 CFR part 35 subpart H; and 40 CFR part 745 subpart F; was approved on 04/25/2012; OMB Number 2070–0151; expires on 04/30/2015; Approved with change.

**Comment Filed**

EPA ICR Number 2323.03; Reconsideration of Chemical Manufacturing Area Sources National Emission Standards for Hazardous Air Pollutants (Proposed Rule); in 40 CFR part 63 subparts A and subpart VVVVVV; OMB filed comment on 04/04/2012.

EPA ICR Number 2453.01; NESHAP for Secondary Aluminum Production; in 40 CFR part 63 subparts A and RRR; OMB filed comment on 04/04/2012.

EPA ICR Number 1611.09; NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; in 40 CFR part 63 subparts A and N; OMB filed comment on 04/04/2012.

EPA ICR Number 2455.01; Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule (Proposed Rule); in 40 CFR 261.39 and 261.41; OMB filed comment on 04/24/2012.

**John Moses,**

*Director, Collections Strategies Division.*

[FR Doc. 2012–11947 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0886; FRL–9517–4]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for New and Amended Pesticide Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for New and Amended Pesticide Registration; EPA ICR No. 0277.16, OMB Control No. 2070–0060. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

**DATES:** Additional comments may be submitted on or before June 18, 2012.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2011–0886, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs (OPP) Regulatory Public Docket (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Martha Shimkin, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5160; fax number: (703) 305–5884; email address: *shimkin.martha@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 14, 2011 (76 FR 77817), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 3 comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2011–0886, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OPP Regulatory Public Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* Application for New and Amended Pesticide Registration.

*ICR Status:* This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* This ICR renewal will allow EPA to collect necessary data to evaluate an application of a pesticide product as required under Section 3 of the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA), and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of August 3, 1996. Under FIFRA, EPA must evaluate pesticides thoroughly before they can be marketed and used in the United States, to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or ''registration'' which permits their distribution, sale and use according to requirements set by EPA to protect human health and the environment. The producer of the pesticide must provide data from tests done according to EPA guidelines or other test methods that provide acceptable data. These tests must determine whether a pesticide has the potential to cause adverse effects on humans, wildlife, fish and plants, including endangered species and non-target organisms, as well as possible contamination of surface water or groundwater from leaching, runoff and spray drift. EPA also must approve the language that appears on each pesticide label. A pesticide product can only be used according to the directions on the labeling accompanying it at the time of sale, through its use and disposal.

Responses to the collection of information are mandatory (see 40 CFR 152). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average from 14 to 840 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 1,683.

*Estimated Annual Number of Responses:* 8,136.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 168,204.

*Estimated Total Annual Cost:* $13,435,600, includes no annualized capital or O&M costs.

*Changes in the estimates from the last approval:* There is an annual respondent burden increase of 92,024 hours as a result of 4,946 additional expected responses, primarily from ''Type B'' activities that involve a registrant or applicant assembling and submitting an application for registration of a new or amended product that contains a currently registered active ingredient. The increase reflects the Agency's tracking of information collected under FIFRA section 3 over the past three years, including increased responses for labeling or labeling amendments. This change is an adjustment.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2012–11950 Filed 5–16–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2011–0253; FRL–9517–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Nonmetallic Mineral Processing (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before June 18, 2012.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0253, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0253, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then

key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted either electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

*Title:* NSPS for Nonmetallic Mineral Processing (Renewal).

*ICR Numbers:* EPA ICR Number 1084.12, OMB Control Number 2060–0050.

*ICR Status:* This ICR is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart OOO.

These regulations apply to the following affected facilities in fixed or portable nonmetallic mineral processing plants: Each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. These regulations also applies to, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of the subpart.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart OOO, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information either to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners or operators of nonmetallic mineral processing facilities

*Estimated Number of Respondents:* 4,697.

*Frequency of Response:* Initially and occasionally.

*Estimated Total Annual Hour Burden:* 12,374.

*Estimated Total Annual Cost:* $1,340,274, which includes $1,185,697 in labor costs, $154,577 in capital/startup costs, and no operation and maintenance (O&M) costs.

*Changes in the Estimates:* There is an increase in the labor hours for both the respondents and the Agency in this ICR compared to the previous ICR. This is due to two considerations. First, performance testing for existing sources will begin 5 years after the initial performance testing following the 2009 ICR amendments, which corresponds to the third year of this renewal. Beginning in the third year of this ICR renewal, 60.9 sources per year would conduct 5-year repeat fugitive Method 9 performance tests. These tests are only required for crushed/broken stone and sand/gravel facilities that do not have water sprays. This yields an annual average of 20.3 sources requiring Method 9 performance tests over the next 3 years. Secondly, there is an increase in the total number of respondents subject to the rule due to a growth in the respondent universe.

There is also an increase in the total labor and Agency costs as currently identified in the OMB Inventory of Approved Burdens. The change in cost estimates reflects the changes in respondent numbers (described above) and updated labor rates available from the Bureau of Labor Statistics.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2012–11955 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2004–0501; FRL 9516–9]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's Green Power Partnership and Combined Heat and Power Partnership (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Any additional comments on this ICR should be submitted on or before June 18, 2012.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0501 to (1) EPA online using *www.regulations.gov* (our preferred method); email: *a-and-r-docket@epamail.epa.gov,* or by mail to EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC and (2) OMB by mail: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mollie Lemon, Climate Protection

Partnerships Division, Office of Atmospheric Programs, MC 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9859; fax number: 202–343–2208; email address: *lemon.mollie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 28, 2011 (76 FR 81491), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0501, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

*Title:* Reporting Requirements under EPA's Green Power Partnership and Combined Heat and Power (CHP) Partnership.

*ICR numbers:* EPA ICR No. 2173.05, OMB Control No. 2060–0578.

*ICR Status:* This ICR currently is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* In 2001, EPA launched two new partnership programs with industry and other stakeholders: the Green Power Partnership (GPP) and the Combined Heat and Power Partnership (CHPP). These voluntary partnership programs encourage organizations to invest in clean, efficient energy technologies, including renewable energy and combined heat and power. EPA collects information from GPP and CHPP Partners to assess the success of these programs in achieving their national energy and greenhouse gas (GHG) reduction goals.

EPA has developed this ICR to obtain authorization to collect information from organizations participating in the GPP and CHPP. Organizations that join these programs voluntarily agree to the following respective actions: (1) Designating a GPP or CHPP liaison and filling out a Partnership Agreement or Letter of Intent, respectively, (2) for the GPP, reporting to EPA on an annual basis their progress toward achieving their green power commitment via a 3-page reporting form; (3) for the CHPP, reporting to EPA information on their existing CHP projects, new project development, and other CHP-related activities via a one-page reporting form (for projects) or via an informal email or phone call (for other CHP-related activities). Partners are organizational entities that have volunteered to participate in either Partnership program.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to equal 2 hours per response. The average number of annual burden hours per type of response is: 1.96 hours for a Partnership Agreement (a one-time burden for GPP Partners), 2.14 hours for a Letter of Intent (a one-time burden for CHPP Partners), 1.38 hours for the Partner Yearly Report for the GPP, and 3.51 hours for the Partner Yearly Report for the CHPP.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which subsequently have changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Organizations participating in the Green Power Partnership and Combined Heat and Power Partnership.

*Estimated Total Annual Number of Respondents:* 2,216.

*Frequency of Response:* annually, on occasion, and one time.

*Estimated Total Annual Hour Burden:* 4,800.

*Estimated Total Annual Cost:* $256,053, which includes no capital costs, $6,744 in operations & maintenance (O&M) costs, and $249,309 in labor costs.

*Changes in the Estimates:* There is a decrease of 1,023 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Since the last ICR renewal, both the GPP and CHPP have introduced program efficiencies to reduce program burden by encouraging the electronic submission of documents directly to the program support contractors. The average number of hours per Partner decreased from 3.24 to 2.17 hours, while the total cost decreased due to a downward correction of the labor rates used to calculate respondent costs and a reduction in hours per response.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2012–11956 Filed 5–16–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0766; FRL–9517–3]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides; EPA ICR No. 0161.12, OMB Control No. 2070–0027. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

**DATES:** Additional comments may be submitted on or before June 18, 2012.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2011–0766, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs Regulatory Public Docket (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Scott Drewes, Field and External Affairs Division, (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 347–0107; fax number: (703) 305–5884; email address: *Drewes.Scott@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 30, 2011 (76 FR 74051), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2011–0766, which is available for online viewing at *www.regulations.gov,* or in person viewing at the OPP Regulatory Public Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

*Title:* Foreign Purchaser Acknowledgement Statement of Unregistered Pesticides.

*ICR numbers:* EPA ICR No. 0161.12, OMB Control No. 2070–0027.

*ICR Status:* This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

*Abstract:* This information collection program is designed to enable the Environmental Protection Agency (EPA) to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement, which is known as the Foreign Purchaser Acknowledgement Statement, or FPAS, must be transmitted to an appropriate official of the government in the importing country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies, along with an explanatory letter, to appropriate government officials of the countries which are importing the pesticide.

In addition to the export notification for unregistered pesticides, FIFRA requires that all exported pesticides include appropriate labeling. Export labeling requirements meet the definition of third-party notification. In the interests of consolidating various related information collection requests, this ICR includes burden estimates for the FPAS requirement for unregistered pesticides, as well as the labeling requirement for all exported pesticides, both registered and unregistered. These burdens have been consolidated in this information collection since the implementation of the 1993 pesticide export policy governing the export of pesticides, devices, and active ingredients used in producing pesticides.

Responses to the collection of information are mandatory (see 40 CFR 168, subpart D). 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average from one to eight hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities potentially affected by this ICR are individuals or entities that either manufacture and export or that reformulate or repackage and export unregistered pesticides. The North American Industrial Classification System (NAICS) code assigned to the parties responding to this information is 325300.

*Estimated Number of Respondents:* 50.

*Frequency of Response:* On occasion.

*Estimated Total Annual Hour Burden:* 24,470.

*Estimated Total Annual Cost:* $1,461,658, includes $0 annualized capital or O&M costs.

*Changes in the Estimates:* There is a decrease of 22 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's updating of burden estimates for this collection based upon historical information on the number of foreign purchaser acknowledgement statements submitted annually. Based upon revised estimates, the average number of foreign purchaser acknowledgement statements submitted annually has decreased from 2,304 to 2,283, with a corresponding decrease in the associated burden from 2,442 hours in the previous renewal to 2,420 hours in the current renewal. This change is an adjustment.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2012–11951 Filed 5–16–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9673–3]**

### Intent To Grant Patent License

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to Grant Co-Exclusive Patent License.

**SUMMARY:** Pursuant to 35 U.S.C. 207 (Patents) and 37 CFR part 404 (U.S. Government patent licensing regulations), EPA hereby gives notice of its intent to grant a co-exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the U.S. patents and patent applications listed at the end of this message, and all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent applications, to American Hydraulic Power, LLC of Michigan.

The inventions pertain to hybrid vehicle technology, particularly hydraulic hybrid drive systems, methods, and components. The proposed license will contain appropriate terms, limitations, and conditions negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations. EPA will finalize terms and conditions and grant the license unless, within 15 days from the date of this notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the inventions listed in the patents and patent applications below should include an application for a nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Attorney and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the Office of Transportation and Air Quality, who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

The proposed license will apply to the following patents and patent applications:

METHOD OR VEHICLE LICENSED INVENTIONS

| Patent No. | Title | Date issued |
|---|---|---|
| 5,495,912 | Hybrid Powertrain Vehicle | March 5, 1996. |
| 5,887,674 | Continuously Smooth Transmission | March 30, 1999. |
| 6,719,080 | Hydraulic Hybrid Vehicle | April 13, 2004. |
| 6,876,098 | Methods of Operating a Series Hybrid Vehicle | April 5, 2005. |
| 7,456,509 | Methods of Operating a Series Hybrid Vehicle (div) | November 25, 2008. |
| 7,337,869 | Hydraulic Hybrid Vehicle with Integrated Drive Module and Four-Wheel-Drive, and Method of Operation Thereof. | March 4, 2008. |
| 7,252,020 | Vehicle Drivetrain including a Clutchless Transmission, and Method of Operation | August 7, 2007. |
| 6,998,727 | Methods of Operating a Parallel Hybrid Vehicle Having an Internal Combustion Engine and a Secondary Power Source. | February 14, 2006. |
| 7,104,349 | Hybrid Powertrain Motor Vehicle with Homogenous Charge Compression Ignition (HCCI) Engine, and Method of Operation Thereof. | September 12, 2006. |
| 7,857,082 | Methods of Operating a Series Hybrid Vehicle (Div.) | December 28, 2010. |
| 7,984,783 | Hydraulic Hybrid Vehicle with Integrated Hydraulic Drive Module and Four-Wheel-Drive, and Method of Operation Thereof (Div.). | July 26, 2011. |
| 8,118,132 | Hydraulic Hybrid Vehicle Methods of Safe Operation | February 21, 2012. |
| 8,162,094 | Hydraulic Hybrid Vehicle with Large-Ratio Shift Transmission, and Method of Operation | April 24, 2012. |

| Application No. | Title | Date filed |
|---|---|---|
| PCT/US2011/027667. | Hydraulic Hybrid Vehicle with Safe and Efficient Hydrostatic Operation | March 9, 2011. |
| 12/654,321 | Methods of Optimizing Efficiency of a Series Hybrid Vehicle with Multi-Gear Transmission | December 17, 2009. |
| 12/711,603 | Hydraulic-Electric Regenerative Energy Storage System | February 24, 2010. |
| PCT/US2011/031806. | Methods for Safe Operation of Hydraulic Hybrid Vehicles with Over-Center Pump/Motors | April 8, 2011. |
| 12/731,326 | Regenerative Energy Storage System for Hybrid Locomotive | March 25, 2010. |
| 12/955,795 | Methods of Operating a Series Hybrid Vehicle (Div.) | November 29, 2010. |
| 13/356,276 | Hydraulic Hybrid Vehicle Methods of Safe Operation | January 23, 2012. |
| 13/424,027 | Hydraulic Hybrid Vehicle with Large-Ratio Shift Transmission, and Method of Operation Thereof | March 19, 2012. |

| Application No. | Title | Date filed |
|---|---|---|
| 61/619,123 | Hydraulic Hybrid Vehicle Control Methods | April 2, 2012. |

HYDRAULIC COMPONENT LICENSED INVENTIONS

| Patent No. | Title | Date issued |
|---|---|---|
| 6,619,325 | Hydraulic Hybrid Accumulator Shut-off Valve | September 16, 2003. |
| 6,996,982 | Method and Device for Switching Hydraulic Fluid Supplies, such as for a Hydraulic Pump/Motor | February 14, 2006. |
| 7,014,429 | High-Efficiency, Large Angle, Variable Displacement Hydraulic Pump/Motor | March 21, 2006. |
| 7,108,016 | Lightweight Low Permeation Piston-in-Sleeve Accumulator | September 19, 2006. |
| 7,121,304 | Low Permeation Hydraulic Accumulator | October 17, 2006. |
| 7,305,914 | Hydraulic Actuator Control Valve | December 11, 2007. |
| 6,170,524 | Fast Valve and Actuator | January 9, 2001. |
| 7,305,915 | Efficient Pump/Motor with Reduced Energy Loss | December 11, 2007. |
| 7,374,005 | Opposing Pump/Motors | May 20, 2008. |
| 7,500,424 | Hydraulic Machine Having Pressure Equalization | March 10, 2009. |
| 7,527,074 | Hydraulic Pressure Accumulator | May 5, 2009. |
| 7,537,075 | Hydraulic Hybrid Vehicle with Integrated Hydraulic Drive Module and Four-Wheel-Drive, and Method of Operation Thereof (Div.). | May 26, 2009. |
| 7,553,085 | Fluid Bearing and Method of Operation | June 30, 2009. |
| 7,594,802 | Large Angle Sliding Valve Plate Pump/Motor | September 29, 2009. |
| 7,617,761 | Opposing Pump/Motors (divisional) | November 17, 2009. |
| 7,677,871 | High-Efficiency, Large Angle, Variable Displacement Hydraulic Pump/Motor (Divisional) | March 16, 2010. |
| 8,052,116 | Quiet Fluid Supply Valve | November 8, 2011. |
| 8,100,221 | Engine-Off Power Steering System | January 24, 2012. |
| 8,020,587 | Piston-in-Sleeve Hydraulic Pressure Accumulator | September 20, 2011. |
| 7,987,940 | Hydraulic Accumulator and Fire Suppression System | August 2, 2011. |

| Application No. | Title | Date filed |
|---|---|---|
| 11/233,822 | Independent Displacement Opposing Pump/Motors and Method of Operation | September 22, 2005. |
| 11/540,089 | Safe Over-Center Pump/Motor | September 29, 2006. |
| 12/701,438 | Variable Length Bent-Axis Pump/Motor | February 5, 2010. |
| 12/567,938 | Hydraulic Circuit and Manifold with Multi-Function Valve | September 28, 2009. |
| 13/415,109 | Modular Hydraulic Hybrid Drivetrain | March 8, 2012. |
| 13/232,677 | Engine-Off Power Steering System | September 14, 2011. |
| 12/215,438 | On-Demand Power Brake System and Method | June 26, 2008. |
| 13/433,839 | On-Board Hydraulic Fluid Degasification System for a Hydraulic Hybrid Vehicle | March 29, 2012. |
| 61/609,597 | Radial Hydraulic Motor for a Hydraulic Hybrid Vehicle | March 12, 2012. |
| 61/635,085 | Integrated Hydraulic Accumulator Dual Shut-Off Valve | April 18, 2012. |

**DATES:** Comments on this notice must be received by EPA at the address listed below by June 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** David Read, Attorney Advisor, Environmental Protection Agency, National Vehicle Fuel Emissions Laboratory, Office of Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (734) 214–4367.

Dated: May 10, 2012.

**Geoff Cooper,**

*Assistant General Counsel, General Law Office.*

[FR Doc. 2012–11965 Filed 5–16–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2012–0375, FRL–9672–8]**

## Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2015

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Solicitation of Applications and Information on Alternatives.

**SUMMARY:** EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2015. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2015 must provide EPA with technical and economic information to support a ''critical use'' claim and must do so by the deadline specified in this notice even if they have applied for an exemption in previous years. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

**DATES:** Applications for the 2015 critical use exemption must be postmarked on or before August 15, 2012.

**ADDRESSES:** EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at *arling.jeremy@epa.gov*. If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202–343–9055 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by U.S. mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460 or by courier delivery to: U.S. Environmental Protection Agency, Office of Air and Radiation,

Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW., Room 1047E, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:**

*General Information:* U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

*Technical Information:* Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, 703–308–8136. Email: *chism.bill@epa.gov.*

*Regulatory Information:* Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460, 202–343–9055. Email: *arling.jeremy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. What do I need to know to respond to this request for applications?

### *A. Who can respond to this request for information?*

Entities interested in obtaining a critical use exemption must complete the application form available at *http://www.epa.gov/ozone/mbr/cueinfo.html.* The application may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users. EPA encourages groups of users with similar circumstances to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). You should contact your local, state, regional or national commodity association to find out whether it plans to submit an application on behalf of your commodity group.

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical and/or economic feasibility research).

### *B. How do I obtain an application form for the methyl bromide critical use exemption?*

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF, Microsoft Word, and Microsoft Excel formats at EPA's Web site: *http://www.epa.gov/ozone/mbr/cueinfo.html;*
2. PDF, Microsoft Word, and Microsoft Excel formats at Docket ID No. EPA–HQ–OAR–2012–0375. The docket can be accessed at *http://www.regulations.gov.* To obtain hard copies of docket materials, please email the EPA Docket Center: *a-and-r-docket@epa.gov.*
3. Hard copies can be ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

### *C. What must applicants address when applying for a critical use exemption?*

To support the assertion that a specific use of methyl bromide meets the requirements of the critical use exemption, applicants must demonstrate that there are no technically and economically feasible alternatives available for that use. EPA's Web site contains a list of available and potential alternatives. This list can be accessed at *http://www.epa.gov/ozone/mbr/alts.html.* Applications must address the technical and economic feasibility of using these alternatives. Specifically, applications must include the following information for the U.S. to successfully defend its nominations for critical uses.

Commodities Such as Dried Fruit and Nuts

Applicants must address potential economic losses due to pest pressures, changes in quality, changes in timing, and any other economic implications for producers when converting to alternatives. Alternatives for which such information is needed include: Sulfuryl fluoride, propylene oxide (PPO), phosphine, and/or controlled atmosphere/temperature treatment system (CATTS). The applicant should include the costs to retrofit equipment or design and construct new fumigation chambers for these alternatives. For the economic assessment applicants must provide the following: The amount of fumigant gas used (both methyl bromide and alternatives), price per pound of the fumigant gas from the most recent use season, application rates, differences in labor inputs (i.e., hours and wages) associated with alternatives, the amount of commodity treated with each fumigant/treatment and the value of the commodity being treated/produced. Also provide cost information on any other practices or equipment used (e.g. sanitation and IPM) that are not needed when methyl bromide is used for fumigation. Include information on the size of fumigation chambers where methyl bromide is used, the percent of commodity fumigated under tarps, the length of the harvest season, peak of the harvest season and duration, and volume of commodity treated daily at the harvest peak.

Where applicable, also provide the following: Examples of specific customer requests regarding pest infestation and examples of any phytosanitary requirements of foreign markets (e.g., import requirements of other countries) that may necessitate use of methyl bromide accompanied by explanation of why the methyl bromide quarantine and preshipment (QPS) exemption is not applicable for this purpose. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their commodity.

Structures and Facilities (Flour Mills, Rice Mills, Pet Food)

Applicants must address potential economic losses due to pest pressures, changes in quality, changes in timing, and any other economic implications for producers when converting to alternatives. Alternatives for which such information is needed include: Sulfuryl fluoride, micro-sanitation, and/or heat. The applicant should include the costs to retrofit equipment for these pest control methods. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season, application rates, differences in labor inputs (i.e., hours and wages) associated with alternatives, and value of the commodity being treated/produced. List how many mills have

been fumigated with methyl bromide over the last three years; the rate, volume, and target CT of methyl bromide at each location; volume of each facility; number of fumigations per year; and date facility was constructed.

Where applicable, also provide the following: Examples of specific customer requests regarding pest infestation and examples of any phytosanitary requirements of foreign markets (e.g., import requirements of other countries) that may necessitate use of methyl bromide accompanied by explanation of why the QPS exemption is not applicable for this purpose. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their facilities.

Dried Cured Pork

Applicants must list how many facilities have been fumigated with methyl bromide over the last three years; the rate, volume, and target CT of methyl bromide at each location; volume of each facility; number of fumigations per year; and the materials from which the facility was constructed. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE.

Cucurbits, Eggplant, Pepper, and Tomato

Applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and/or your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE.

Strawberry Fruit

Applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and any fumigationless system (if data are available). Applications must address regulatory and economic implications for growers and/or your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE.

Nursery Stock, Orchard Replant, Ornamentals, and Strawberry Nursery

Applicants must address potential changes to yield, quality, and timing when converting to alternatives, including: The mixture of 1,3-dichloropropene plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), dimethyl disulfide (DMDS), and steam. Applications must address regulatory and economic implications for growers and/or your region's production of these crops using these alternatives, including the costs to retrofit equipment and the differential impact of buffers for methyl bromide plus chloropicrin compared to the alternatives. For the economic assessment applicants must provide the following: Price per pound of fumigant gas used (both methyl bromide and alternatives) from the most recent use season; application rates; value of the crop being produced; differences in labor inputs (i.e., hours and wages); and any differences in equipment costs or time needed to operate equipment associated with alternatives. The application must also contain a description of your future research plans which includes the pest(s), chemical(s), or management practice(s) you will be testing in the future to support this CUE.

*D. What if I applied for a critical use exemption in a previous year?*

Critical use exemptions are valid for only one year and do not automatically renew. All users desiring to obtain an exemption for 2015 must apply to EPA even if they have applied for critical uses in previous years. Because of the latest changes in registrations, costs, and economic aspects for producing critical use crops and commodities, applicants must fill out the application form completely.

*E. What portions of the applications will be considered confidential business information?*

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as ''trade secret,'' ''proprietary,'' or ''company confidential.'' You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2 subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the ''Worksheet 6: Application Summary'' page of the application any information that you wish to claim as confidential

business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

**II. What is the legal authority for the critical use exemption?**

*A. What is the Clean Air Act (CAA) authority for the critical use exemption?*

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the *Montreal Protocol on Substances that Deplete the Ozone Layer* for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, the production and consumption of methyl bromide was phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol.

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption allowances prior to 2005 is not confined to critical uses under EPA's phaseout regulations; however, other restrictions may apply.

*B. What is the Montreal Protocol authority for the critical use exemption?*

The Montreal Protocol provides that the Parties may exempt ''the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses'' (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses.''

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination and an exemption from the production and consumption phaseout:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. * * * Non-Article 5 Parties [e.g., developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. * * *

EPA has defined ''critical use'' in its regulations at 40 CFR 82.3 in a manner similar to Decision IX/6 paragraph (a).

*C. What is the timing for applications for the 2015 control period?*

There is both a domestic and international component to the critical use exemption process. The projected timeline for the process for the 2015 critical use exemption is as follows:

May 17, 2012: Solicit applications for the methyl bromide critical use exemption for 2015.

August 15, 2012: Deadline for submitting critical use exemption applications to EPA.

Fall 2012: U.S. Government (EPA, Department of State, U.S. Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2013: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2013: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) review the nominations for critical use exemptions.

Mid 2013: Parties consider TEAP/MBTOC recommendations.

November 2013: Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2015.

Mid 2014: EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2015.

Late 2014: EPA publishes final rule allocating critical use exemptions in the U.S. for 2015.

January 1, 2015: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2015 control period.

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: May 8, 2012.

**Sarah Dunham,**

*Director, Office of Atmospheric Programs.*

[FR Doc. 2012–11842 Filed 5–16–12; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $4.3 billion direct loan to support the export of approximately $3.3 billion in U.S. equipment and services to establish a new petrochemical facility in Saudi Arabia.

The U.S. exports will enable the facility to produce approximately: 750,000 metric tons of linear low density polyethylene (LLDPE); 350,000 metric tons of linear density polyethylene (LDPE); 250,000 metric tons of elastomers; 200,000 metric tons of glycol ethers; 70,000 metric tons of propylene glycol (MPG); 208,000 metric tons of ethanolamines and ethyleneamines; 400,000 metric tons of polyether polyols; 200,000 metric tons of toluene diisocyanate (TDI); and 400,000 metric tons of polymeric methyl diphenyl diisocyanate (PMDI). Initial production at this facility is expected to be phased in from 2016 to 2018.

Available information indicates the Saudi petrochemical producer plans to sell its products as follows: The majority of LDPE, LLDPE and glycol ethers will be sold primarily in the Asia-Pacific market, and the balance will be sold in the Europe, Middle East and Africa

markets; the majority of elastomers, TDI, PMDI, and polyether polyols will be sold primarily in Asia-Pacific, Europe, Middle East and Africa markets and minority will be sold in the North and Latin America; approximately equal volumes of MPG will be sold primarily in Asia-Pacific, Europe, Middle East and Africa markets; and approximately equal volumes of ethanolamines and ethyleneamines will be sold globally.

Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

**Angela Mariana Freyre,**

*Senior Vice President and General Counsel.*

[FR Doc. 2012–11953 Filed 5–16–12; 8:45 am]

BILLING CODE 6690–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, May 15, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Jeremiah O. Norton (Appointive), seconded by Director Thomas M. Hoenig (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau) and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: May 15, 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2012–12089 Filed 5–15–12; 4:15 pm]

BILLING CODE P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** *Tuesday May 22, 2012 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.

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2012–12114 Filed 5–15–12; 4:15 pm]

BILLING CODE 6715–01–P

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which is a currently approved information collection. The Board is publishing this proposal on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the reports. The Board will then submit the report to OMB for review and approval.

**DATES:** Comments must be submitted on or before July 16, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

You may submit comments, identified by FFIEC 019 (7100–0213), by any of the following methods:

- *Agency Web Site: www.federalreserve.gov.* Follow the instructions for submitting comments on the *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, 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, except as necessary 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 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 for the agencies by mail to Office of Information and Regulatory Affairs, U.S. 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:** Additional information or a copy of the collection may be requested from Cynthia Ayouch, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

**SUPPLEMENTARY INFORMATION:** Proposal to extend for three years, without revision, the following currently approved collection of information:

*Report Title:* Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

*Form Number:* FFIEC 019.

*OMB Number:* 7100–0213.

*Frequency of Response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Estimated Number of Respondents:* 168.

*Estimated Average Time per Response:* 10 hours.

*Estimated Total Annual Burden:* 6,720 hours.

### General Description of Reports

This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the FDIC; and the National Bank Act (12 U.S.C. 161) for the OCC. This information collection is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(8)).

### Abstract

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

### Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology;

and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimate and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, May 14, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11939 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

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## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). 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 instrument(s) 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.

**FOR FURTHER INFORMATION CONTACT:** 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.

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.

*Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:*

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

*Agency form number:* FR 2018.

*OMB control number:* 7100–0058.

Frequency: Up to six times a year.

*Reporters:* Domestically chartered large commercial banks and large U.S. branches and agencies of foreign banks.

*Estimated annual reporting hours:* 1,248 hours.

*Estimated average hours per response:* 2 hours.

*Number of respondents:* 104.

*General description of report:* This information collection is authorized by Sections 2A, 12A and 11 of the Federal Reserve Act (12 U.S.C. 225a, 248(a) and 12 U.S.C. § 263)) and Section 7 of the International Banking Act (12 U.S.C. 3105(c)(2)) and is voluntary. Individual respondent data are regarded as confidential under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

*Abstract:* The FR 2018 is conducted with a senior loan officer at each respondent bank, generally through electronic submission, up to six times a year. The purpose of the survey is to provide qualitative and limited quantitative information on credit availability and demand, as well as evolving developments and lending practices in the U.S. loan markets. Consequently, a portion of the questions in each survey typically covers special topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or other financial entities) should the need

arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

*Current Actions:* The Federal Reserve proposes to reduce the minimum asset size for panel institutions from $3 billion to $2 billion and add 20 domestically chartered commercial banks with $2 to $10 billion in total assets to the current reporting panel. The Federal Reserve believes that the additions to the panel would provide deeper coverage of commercial real estate loans and small business lending, as well as a more comprehensive picture of differences in lending conditions at the largest banks and regional banks.

On February 6, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 5802) requesting public comment for 60 days on the proposal to extend, with revision, the Senior Loan Officer Opinion Survey on Bank Lending Practices. The comment period for this notice expired on April 6, 2012. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

2. *Report title:* Senior Financial Officer Survey.

*Agency form number:* FR 2023.

*OMB control number:* 7100–0223.

*Frequency:* Up to four times a year.

*Reporters:* Domestically chartered large commercial banks.

*Estimated annual reporting hours:* 960 hours.

*Estimated average hours per response:* 3 hours.

*Number of respondents:* 80.

*General description of report:* This information collection is authorized by Sections 2A, 11 and 12A of the Federal Reserve Act (12 U.S.C. 225a, 248(a), and 263) and is voluntary. Individual respondent data are regarded as confidential under the authority of exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

*Abstract:* The Federal Reserve uses this voluntary survey to collect qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets. Responses are obtained from a senior officer at each participating institution usually through an electronic submission. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest. The survey helps pinpoint developing trends in bank funding practices, enabling the Federal Reserve to distinguish these trends from transitory phenomena.

*Current Actions:* The Federal Reserve proposes to add 20 domestically chartered commercial banks with $2 to $10 billion in total assets to the current reporting panel and reduce the minimum asset size for panel institutions from $3 billion to $2 billion. The Federal Reserve believes that the additions to the panel would provide a more comprehensive picture of differences in funding conditions at the largest banks and regional banks, and deeper coverage of banks that lend in commercial real estate and small business markets. The reporting panel selection criteria for the FR 2023 are consistent with those criteria from the FR 2018. The proposed FR 2023 panel revisions are necessary in order to maintain consistency with the proposed panel revision in the FR 2018.

On February 6, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 5802) requesting public comment for 60 days on the proposal to extend, with revision, the Senior Financial Officer Survey. The comment period for this notice expired on April 6, 2012. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System.

Dated: May 14, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11940 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *FCG Investors, LLLP,* and its general partner, James W. Heavener, both of Winter Park, Florida; to acquire additional voting shares, and retain control of Florida Capital Group, Inc., and thereby indirectly acquire additional voting shares, and retain control of Florida Capital Bank, both in Jacksonville, Florida.

Board of Governors of the Federal Reserve System, May 11, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11897 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street,

Philadelphia, Pennsylvania 19105–1521:

1. *ESSA Bancorp, Inc.,* Stroudsburg, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Starr Bancorp and First Star Bank, both in Bethlehem, Pennsylvania.

Board of Governors of the Federal Reserve System, May 14, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11963 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement), 101 Market Street, San Francisco, California 94105–1579:

1. *First Foundation Inc.* to engage in financial and investment advisory activities through its wholly owned subsidiary, First Foundation Advisors, both of Irvine, California, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11896 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Farmers Bancshares, Inc.,* Hardinsburg, Kentucky; to engage directly in lending activities through the purchase of loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 2012.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2012–11964 Filed 5–16–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:00 a.m. (Eastern Time), May 21, 2012.

**PLACE:** 10th Floor Board Room, 77 K Street NE., Washington, DC 20002.

**STATUS:** Parts will be open to the public and parts will be closed to the public.

**Matters To Be Considered**

*Parts Open to the Public*

1. Approval of the Minutes of the April 30, 2012 Board Member Meeting
2. Thrift Savings Plan Activity Report by the Executive Director
   a. Monthly Participant Activity Report
   b. Monthly Investment Performance Report
   c. Legislative Report
3. Roth Launch Update

*Parts Closed to the Public*

4. Security
5. Personnel

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: May 14, 2012.

**James B. Petrick,**

*Secretary, Federal Retirement Thrift Investment Board.*

[FR Doc. 2012–12022 Filed 5–15–12; 11:15 am]

**BILLING CODE 6760–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**[Document Identifier: OS–0937–0198; 30-day Notice]**

### Agency Information Collection Request; 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections

referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

*Proposed Project:* Public Health Service Polices on Research Misconduct (42 CFR part 93)—OMB No 0937–0198–Extension—Office of Research Integrity

*Abstract:* This is a request for an extension of the currently approved collection. The purpose of the Annual Report on Possible Research Misconduct (Annual Report) form is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS supported research. In addition this provides an annual assurance that the institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation. Lastly, the form will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

ESTIMATED ANNUALIZED BURDEN TABLE

| Forms (if necessary) | Type of respondent | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|---|
| PHS–6349 | Awardee Institutions | 6,096 | 1 | 10/60 | 1,016 |

**Keith A. Tucker,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. 2012–11921 Filed 5–16–12; 8:45 am]

**BILLING CODE 4150–30–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Statement of Organization, Functions, and Delegations of Authority; Office of The National Coordinator for Health Information Technology

**ACTION:** Notice.

**SUMMARY:** The Office of the National Coordinator for Health Information Technology has reorganized its office in order to more effectively meet the mission outlined by The Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA). The reorganization includes one change and five functional realignments.

**FOR FURTHER INFORMATION CONTACT:** Sam Shellenberger, Office of the National Coordinator, Office of the Secretary, 200 Independence Ave. SW., Washington, DC 20201, 202–690–7151.

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Chapter AR, Office of the National Coordinator for Health Information Technology (ONC), as amended at 74 FR 62785–62786, dated December 1, 2009, as corrected at 75 FR 49494, dated August 13, 2010, as amended at 76 FR 6795, dated February 8, 2011, and as last amended at 76 FR 65196, dated October 20, 2011, is amended as follows:

I. Under Section AR.10 Organization, insert ''Office of the Chief Medical Officer (ARG)'' as item C as follows and renumber items C through G accordingly.

II. Under Section AR. 10 Organization, delete ''E. Office of the Chief Scientist (ARC)'' and replace it with ''E. Office of Science and Technology (ARC).''

III. Under Section AR.10 Organization, add a new line, ''I. Office of Communications (ARH).''

IV. Under Section AR.20 Functions, insert the following new Paragraph C and renumber Paragraphs C through G accordingly:

C. Office of the Chief Medical Officer (ARG): The Office of the Chief Medical Officer works with and reports directly to the National Coordinator and will be responsible for working with private sector medical organizations to achieve widespread use of health information technology by physicians.

V. Under Section AR.20 Functions, Paragraph B, ''Office of the Principal Deputy (ARA1),'' at the end of the second sentence, remove ''and, Office of the Chief Scientist'' and add the following new language to the end of the sentence, ''Office of Science and Technology, and Office of Communications.''

VI. Under Section AR.20 Functions, Paragraph E, ''Office of the Chief Scientist (ARC)'':

A. Replace all instances of ''Office of the Chief Scientist'' with ''Office of Science and Technology.''

B. Remove ''and'' before item (6) in the second sentence and add the following new language to the end of the sentence, ''; and (7) developing the mechanisms for establishing and implementing standards necessary for nationwide health information exchange.''

VII. Under Section AR.20 Functions, Paragraph F, ''Office of the Deputy National Coordinator for Programs & Policy (ARD)'':

A. Under the second sentence, remove ''(3) developing the mechanisms for establishing and implementing standards necessary for nationwide health information exchange;'' and renumber items (4) through (6) accordingly.

B. Remove the ''and'' before ''(5)'' and add the following new language to the end of the second sentence: ''; (6) overseeing consumer use of electronic personal health information; and (7) leading activities for certification of health information technology.''

VIII. Under Section AR.20 Functions, Paragraph G, ''Office of the Deputy National Coordinator for Operations (ARE),'' third sentence, remove ''(5) stakeholder communications;'' and renumber item (6) accordingly.

IX. Under Section AR.20 Functions, insert new Paragraph I, as follows:

I. Office of Communications (ARH): The Office of Communications is headed by a Director. The Office is responsible for: (1) Setting the strategic direction for ONC communications efforts; (2) guiding the development of a comprehensive stakeholder

communications and constituency relations plan; and, (3) ensuring that all communications activities are developed and implemented consistent with and in support of this plan. The Office's activities promote ONC's broader mission of the nationwide implementation of interoperable health information technology in both the public and private health care sectors. Such activities include identifying ways to increase awareness of the value of electronic health records (EHRs) to improve health care and to create awareness of the HITECH Act provisions among all stakeholders.

X. Delegation of Authority. Pending further delegation, directives or orders by the Secretary or by the National Coordinator for Health Information Technology, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Dated: May 7, 2012.

**E.J. Holland, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 2012–11910 Filed 5–16–12; 8:45 am]

**BILLING CODE 4150–24–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–12–12EL]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Critical Thinking and Cultural Affirmation (CTCA): Evaluation of a Locally Developed HIV Prevention Intervention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

In 2005, the Centers for Disease Control and Prevention (CDC) reported that 80,187 African Americans were diagnosed with HIV/AIDS, which represents 51% of persons diagnosed. African-American men with HIV/AIDS represented 44% of all cases among males (Centers for Disease Control and Prevention [CDC], 2005). These statistics have been consistently disproportional since the late 1990s, with African Americans bearing the greatest burden of new HIV cases in most regions of the United States. The Centers for Disease Control and Prevention estimates that at the end of 2006, Blacks were disproportionately affected by HIV. The 2006 HIV infection rate in Blacks was nearly twice the rate of Whites (92 out of every 100,000 Blacks compared to 48 per 100,000 Whites and 31 per 100,000 Hispanics). Among males, Black males accounted for the largest number of diagnosed HIV infections and have the highest HIV infection rate of any race/ethnicity group (144 per 100,000, compared to 94 per 100,000 for White males and 50 per 100,000 for Hispanic males

While many HIV prevention and intervention studies include samples of African-American men and African-American Men who have Sex with Men (AAMSM), beyond demonstrating disparities in seroprevalence between and among racial groups, few have been specifically designed and evaluated for efficacy among African American men. Because few HIV prevention interventions targeting AAMSM have been developed and rigorously evaluated, while their HIV infection rates remain disproportionately high and continue to rise, identifying effective interventions for AAMSM is a public health imperative.

The purpose of this project is to test the efficacy of an HIV transmission prevention intervention for reducing sexual risk among African American men who have sex with men in Chicago, Illinois. The intervention is a 3-day weekend retreat, group-level CTCA intervention that combines cultural affirmation with critical thinking and empowerment, to increase reasoning skill, problem solving capacity, self-protective behavior change, and well-being which facilitates the reduction of risky sexual behaviors. A convenience sample of 438 AAMSM will be recruited to participate in the study. We anticipate recruiting potential participants for the CTCA RCT through a variety of community venues, using both active (i.e., venue outreach) and passive (i.e., referral, flyers/handcards, Internet) recruitment techniques. The intervention will be evaluated using baseline, 3-month and 6-month follow up assessments. This project will also conduct exit surveys to identify men who were more favorable—men who agreed with positive comments about the intervention and those who were less favorable—men who disagreed with positive comments about the intervention. Exit interviews will be conducted with 15 favorable and 15 less favorable men identified by the Exit Survey to help understand participants' experiences with the CTCA intervention and their thoughts about the content of the intervention and ways in which it could be improved. Using the participant responses to the exit survey, we will categorize participants into two categories: Favorable (those men reporting a favorable reaction to the intervention) and unfavorable (those men reporting an unfavorable reaction to the intervention). Once we have 50 participants in each category, we will randomly select 15 participants from each group and invite them to participate in the exit interview. We anticipate that we will need to repeat these procedures and extend an invitation to at least 65 participants in order to reach and successfully interview 15 participants in each group.

CDC is requesting approval for a 3-year clearance for data collection. The data collection system involves a pre and full screening, brief locator information, record locator information, baseline assessment, 3-month follow-up assessment, 6-month follow-up assessment, participant evaluation forms, exit survey, and exit interviews. An estimated 1000 men will be pre-screened and 515 will be full-screened for eligibility in order to enroll 438 men. The baseline and follow up questionnaires will be administered electronically using audio computer assisted self-interview (ACASI). The ACASI interview includes questions about participants' socio-demographic information, health and healthcare, sexual activity, substance use, and other psychosocial issues. The duration of each baseline, 3-month, and 6-month assessments are estimated to be 60 minutes; the exit survey 10 minutes; the exit interview 30 minutes; pre-screening form 5 minutes; full-screening form 10 minutes; brief locator information form 5 minutes; record locator information form 10 minutes; each participant evaluation survey 5 minutes.

There is no cost to participants other than their time. The total estimated annual burden hours are 527.

| Type of respondent | Form name | Number of respondents | Number responses per respondent | Average burden per respondent (in hours) |
|---|---|---|---|---|
| Prospective Study Participant | Pre-Screening Form | 333 | 1 | 5/60 |
| Prospective Study Participant | Full-Screening Form | 172 | 1 | 10/60 |
| Prospective Study Participant | Brief Locator Form | 172 | 1 | 5/60 |
| Enrolled Study Participant | Record Locator Form | 146 | 1 | 10/60 |
| Enrolled Study Participant | Baseline Assessment | 146 | 1 | 1 |
| Enrolled Study Participant | 3-month Follow-up Assessment. | 132 | 1 | 1 |
| Enrolled Study Participant | 6-month Follow-up Assessment. | 117 | 1 | 1 |
| Enrolled Study Participant | Participant Evaluation Forms | 146 | 6 | 5/60 |
| Enrolled Study Participant | Exit Survey | 117 | 1 | 10/60 |
| Enrolled Study Participant | Exit Interview | 10 | 1 | 30/60 |

**Kimberly S. Lane,**

*Deputy Director, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2012–11878 Filed 5–16–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Meeting of the Community Preventive Services Task Force (CPSTF)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (CPSTF). The Task Force—an independent, nonfederal body of nationally known leaders in public health practice, policy, and research, who are appointed by the CDC Director—was convened in 1996 by the Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting, the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

**DATES:** The meeting will be held on Wednesday, June 20, 2012 from 8:30 a.m. to 5:30 p.m., EST and Thursday, June 21, 2012 from 8:30 a.m. to 1:00 p.m. EST.

Logistics: The Task Force Meeting will be held at the Emory Conference Center's at 1615 Clifton Road Atlanta, GA 30329. Information regarding logistics will be available on the Community Guide Web site (*www.thecommunityguide.org*), Wednesday, May 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Allyson Brown, The Community Guide Branch, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, Georgia 30333, phone: (404) 498–0937), email: *CPSTF@cdc.gov.*

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

Matters To Be Discussed: Updates on Cancer, Motor vehicle-related injuries, Tobacco, Health Equity, and Alcohol.

Meeting Accessibility: This meeting is open to the public, limited only by space availability.

Dated: May 3, 2012.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2012–11938 Filed 5–16–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control; Special Interest Projects (SIPs): Initial Review

The meeting announced below concerns Examination of Environmental Characteristics that Enable and/or Promote Frequent Indoor Tanning among Young Adults to Inform Future Public Health Policy Efforts to Prevent Skin Cancer, SIP12–054, Pilot Study to Evaluate Strategies for Reducing Medical Radiation Exposure in Children, SIP12–055, and Innovative Message Framing to Increase Support for Evidence-based Tobacco Control, SIP12–060, Panel A, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

**Time and Date**

11:00 a.m.–5:30 p.m., June 20, 2012 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of ''Examination of Environmental Characteristics that Enable and/or Promote Frequent Indoor Tanning among Young Adults to Inform Future Public Health Policy Efforts to Prevent Skin Cancer, SIP12–054, Pilot Study to Evaluate Strategies for Reducing Medical Radiation Exposure in

Children, SIP12–055, and Innovative Message Framing to Increase Support for Evidence-based Tobacco Control, SIP12–060, Panel A, initial review.''

*Contact Person for More Information:* M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 10, 2012.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2012–11952 Filed 5–16–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0473]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food

**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 provisions of FDA's requirements for food irradiation processors.

**DATES:** Submit either electronic or written comments on the collection of information by July 16, 2012.

**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:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@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.

### Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the FD&C Act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of radiation emitted by X-ray tube sources. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by FDA that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The Agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

*Description of respondents:* Respondents are businesses engaged in the irradiation of food.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 179.25(e), Large processors | 3 | 300 | 900 | 1 | 900 |
| 179.25(e), Small processors | 4 | 30 | 120 | 1 | 120 |
| Total | | | | | 1,020 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of burden for the recordkeeping provisions of § 179.25(e) on the Agency's experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. FDA estimates that there are three irradiation plants whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on three facilities devoting 100 percent of their business to food irradiation (3 × 300 hours = 900 hours for recordkeeping annually), and four facilities devoting 10 percent of their business to food irradiation (4 × 30 hours = 120 hours for recordkeeping annually).

No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2), and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: May 11, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–11933 Filed 5–16–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0858]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study on Comparing Data Obtained From Landline Telephone and Cell Phone Surveys

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by June 18, 2012.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–New and title ''Experimental Study on Comparing Data Obtained From Landline Telephone and Cell Phone Surveys.'' Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Experimental Study on Comparing Data Obtained From Landline Telephone and Cell Phone Surveys—(OMB Control Number 0910–NEW)

#### I. Background

Since the early 1980s, the Center for Food Safety and Applied Nutrition at FDA has been commissioning several waves of two national consumer surveys, the Food Safety Survey (FSS) and the Health and Diet Survey (HDS), to gather data on consumer knowledge, perceptions, and behaviors regarding food safety and nutrition. The purposes of the surveys are threefold: (1) To generate nationally representative estimates of knowledge, perceptions, and practices of interest at a given point in time; (2) to track trends of the estimates over time; and (3) to understand the relationships among knowledge, perceptions, and practices regarding food safety and nutrition, and how these relate to demographic characteristics.

Traditionally, all waves of the surveys have been administered via landline telephones and have used the random digit dialing (RDD) technique to recruit national samples of adults (18 years old or above) from households with landline telephone numbers. A noticeable phenomenon that has appeared in our recent surveys is a precipitous decline of younger respondents in completed interviews. For example, the proportion of respondents in the 18 to 29 age group for the FSS has dropped from 17 percent in 2001, to 11 percent in 2006, to only 4 percent in 2010; the corresponding proportion for the HDS has gone from 14 percent in 2002, to 15 percent in 2004, to only 6 percent in 2008.

One possible reason for the decline is the rapid adoption of cell phones in recent years. During the second half of 2010, 28 percent of American adults lived in households with only wireless service (''wireless-only households'' or ''cell-phone only households''), compared to 15 percent in the second half of 2007 and 5 percent in the second half of 2004 (Ref. 1). During the second half of 2010, 17 percent of adults lived

in households that received all or almost all calls on cell phones despite having a landline phone (''wireless-mostly households'' or ''cell-phone mostly households''), an increase of 3 percentage points from the first half of 2008 (Ref. 1). Thus, the number of adults reachable by landline phone calls has decreased in recent years. The rate of cell phone adoption, however, has been uneven among adults with different demographic characteristics. In 2010, adults living in wireless-only households were more likely to be 18 to 34 year olds, living in poorer households, without a college or higher educational degree, or Hispanics or Latinos (Ref. 1). Meanwhile, adults who live in landline households differ from those who live in wireless-only households as well those in wireless-mostly households (Ref. 2), and the demographic characteristics of adults living in wireless-mostly households are much less diverse than that of adults living in wireless-only households (Ref. 1).

The underrepresentation of wireless-only or wireless-mostly adults, especially those in younger age groups, in landline surveys can affect national estimates of the prevalence of certain consumer perceptions, knowledge or behaviors, and understanding of the relationships between certain survey responses and demographic characteristics. For example, previous research found different prevalence rates of drinking and smoking between respondents reached on a landline call versus respondents from wireless-only households (Ref. 1). Wireless-mostly adults were less likely than landline adults to say their health is fair or poor and were less likely to be a current smoker than wireless-only adults (Ref. 2). Voigt et al. (Ref. 3) reported that cell phone users were less likely to have fathered or given birth to a child than their landline telephone counterparts. The differences observed in these studies are pertinent and potentially problematic for the HDS and FSS because past surveys have shown that age variations were associated with, among other things, consumers' knowledge of dietary fats, and awareness and concern about pesticide and antibiotic residues (Refs. 4 and 5).

Thus, our recent surveys may have become vulnerable to a noncoverage problem due to the fact that many eligible respondents are not included in the survey samples because they do not own landline phones or because they receive calls only or mostly on cell phones. Adults living in wireless-only and wireless-mostly households are less likely to appear in landline telephone samples and often possess characteristics that differ from those of adults in landline households. Thus, a telephone survey that still relies exclusively on landline phone calls to interview respondents may not produce results that are reliable and valid (Refs. 2 and 6), may not yield results that are comparable to results from past landline surveys when this noncoverage problem was absent, or both.

One common approach to addressing potential impacts of cell phone use on landline telephone survey results is to supplement a landline telephone survey with a cell phone survey to achieve a wider coverage of population in the sample of respondents. Existing evidence on the usefulness of this approach varies between national estimates and population subgroup estimates. Many studies conducted around the mid-2000s (for example, Ref. 7), when the use of cell phones was not as common as today, and a 2007 study (Ref. 2) suggested that general population estimates of certain social and political attitudes, voting behavior, and media use and attitudes did not always vary when a landline survey was supplemented or was not supplemented with a cell-phone only survey, especially when the response to a landline survey was weighted to reflect population characteristics. On the other hand, this research also suggested that among young adults and low-income adults, estimates of certain health-related behaviors, such as smoking and binge drinking, differ between those living in households with and without landlines (Ref. 8). In addition, young adults who had a landline phone were less likely to report drinking alcohol or to agree that marijuana smoking is acceptable (Ref. 9). We are, however, not aware of any research that has examined whether food safety or nutrition related perceptions, attitudes, and behaviors differ when landline telephone surveys miss respondents who are not reachable by landline telephone calls.

Therefore, we are concerned that the diminishing survey participation among consumers who are not easily reached by landline telephones may lead to unreliable or biased estimates of critical information and the relationships among knowledge, perceptions, and other food safety and nutrition-related variables. These concerns warrant a systematic examination of the impacts of cell phone use on the quality of the FSS and HDS data.

The objective of this data collection is to provide data for an experimental study that compares demographic distributions in and responses to selected FSS and HDS questions by samples of respondents drawn from an overlapping dual frame (Ref. 6), i.e., two overlapping sampling frames: (1) A list-assisted landline telephone frame and (2) a cell-phone frame. Using this approach, we will not screen out any households or individuals because of their type(s) of telephone service (landline or cell phone). The study plans to interview 2,000 respondents in English, half of them (1,000) using a 10-minute HDS questionnaire and half of them (1,000) using a 10-minute FSS questionnaire. Each respondent will be randomly assigned to one of the questionnaires. The target distributions within each of the HDS and FSS samples are:

- 700 respondents who are drawn from the landline frame and complete the questionnaire on a landline telephone;
- 150 respondents who are drawn from the cell phone frame and complete the questionnaire on a cell phone, regardless whether they are wireless-only or wireless-mostly; and
- 150 respondents who are drawn from the cell phone frame, complete the questionnaire on a cell phone, and do not have a landline phone to receive personal calls.

The HDS questionnaire will focus on knowledge of dietary fats, use of food labels, awareness of diet-health relationships, and use and understanding of dietary supplements. The FSS questionnaire will focus on perceptions of general food safety risks, food handling practices, perceived personal vulnerability to food safety risks, consumption of risky foods, and awareness of mercury and fish. All questions have been asked in previous surveys.

The Agency will use the study to assess the impacts of cell phone use on population estimates of nutrition and food safety related perceptions, attitudes, and behaviors. The assessment will help the Agency determine whether and how future administrations of the FSS and HDS should be adjusted to produce reliable, valid, and historically comparable results in response to the growing prevalence of cell phone use.

In the **Federal Register** of December 7, 2011 (76 FR 76422), FDA published a 60-day notice requesting public comment on the proposed collection of information. The Agency received two comments in response to the notice. Both responses dealt with topics outside the scope of the proposed collection of information described in the 60-day notice and are therefore not addressed here.

FDA estimates the burden of this collection of information as follows:

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 |
|---|---|---|---|---|---|
| Pretest | 10 | 1 | 10 | 0.167 (10 minutes) | 2 |
| Survey | 2,000 | 1 | 2,000 | 0.167 (10 minutes) | 334 |
| Total | | | | | 336 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

## II. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)


1. Blumberg, S.J. and J.V. Luke, ''Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2010.'' National Center for Health Statistics, June 2011. Available at: *http://www.cdc.gov/nchs/nhis.htm.*
2. Lee, S., J.M. Brick, E.R. Brown, and D. Grant, ''Growing Cell-Phone Population and Noncoverage Bias in Traditional Random Digit Dialing Telephone Health Surveys,'' *Health Services Research,* 45: 1121–1139, 2010.
3. Voigt, L.F., S.M. Schwartz, D.R. Doody, et al., ''Feasibility of Including Cellular Telephone Numbers in Random Digit Dialing for Epidemiologic Case-Control studies,'' *American Journal of Epidemiology,* 173: 118–126, 2011.
4. Yen, S.T., K.L. Jensen, and C.-T.J. Lin, ''Awareness and Perceived Risk of Pesticide and Antibiotic Residues in Food: Socioeconomic Variations Among United States' Consumers,'' *Food Protection Trends,* 26: 654–661, 2006.
5. Lin, C.-T.J. and S.T. Yen, ''Knowledge of Dietary Facts Among U.S. Consumers,'' *Journal of the American Dietetic Association,* 110: 613–618, 2010.
6. American Association for Public Opinion Research (AAPOR), ''New Considerations for Survey Researchers When Planning and Conducting RDD Telephone Surveys in the U.S. With Respondents Reached via Cell Phone Numbers,'' 2010. Available at: *http://www.aapor.org/Cell_Phone_Task_Force_Report.htm.*
7. Keeter, S., ''The Impact of Cellular Phone Noncoverage Bias on Polling in the 2004 Presidential Election,'' *Public Opinion Quarterly,* 70: 88–98, 2006.
8. Blumberg, S.J. and J.V. Luke, ''Reevaluating the Need for Concern Regarding Noncoverage Bias in Landline Surveys,'' *American Journal of Public Health,* 99: 1806–1810, 2009.
9. Keeter, S., C. Kennedy, A. Clark, et al., ''What's Missing From National Landline RDD Surveys? The Impact of the Growing Cell-Only Population,'' *Public Opinion Quarterly,* 71: 772–792, 2007.


Dated: May 11, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–11934 Filed 5–16–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Cross-Site Evaluation of the Minority Substance Abuse/HIV Prevention Program—(OMB No. 0930–0298)—Revision and Reinstatement**

The Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the revision of data collection activities for the cross-site study of the Minority HIV/AIDS Initiative (MAI), which includes both youth and adult questionnaires. This revision includes the addition of four cohorts, changes to the data collection procedures based on intervention duration, and the addition of two questions on binge drinking behavior. The instruments were also modified to include six items for adults and three items for youth on military families and deployment that were recently approved by OMB under the CSAP National Outcomes Measures (NOMs) (OMB # 0930–0230). The current approval for the full cross-site is under OMB No. 0930–0298, which expires on 4/30/12.

This cross-site study supports two of SAMHSA's eight Strategic Initiatives: Prevention of Substance Abuse and Mental Illness and Data, Outcomes, and Quality. The primary objectives of the cross-site study are to:

- Determine the success of the MAI in preventing, delaying, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among the target populations.
- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, referrals to appropriate medical treatment and/or other intervention strategies (i.e., cultural enrichment activities, educational and vocational resources, and computer-based curricula).
- Assess the process of adopting and implementing the Strategic Prevention

Framework (SPF) with the target populations.

Grantees are community based organizations that are required to address the SAMSHA Strategic Prevention Framework (SPF) and participate in this cross-site evaluation. The grantees are expected to provide leadership and coordination on the planning and implementation of the SPF that targets minority populations, the minority reentry population, as well as other high risk groups residing in communities of color with high prevalence of SA and HIV/AIDS.

The grantees are expected to provide an effective prevention process, direction, and a common set of goals, expectations, and accountabilities to be adapted and integrated at the community level. While the grantees have substantial flexibility in choosing their individual evidence-based programs, they are all required to base them on the five steps of the SPF to build service capacity specific to SA and HIV prevention services. Conducting this cross-site evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

Grantees must also conduct ongoing monitoring and evaluation of their projects to assess program effectiveness including Federal reporting of the Government Performance and Results Act (GPRA) Modernization Act of 2010, SAMHSA/CSAP National Outcome Measures (NOMs), and HIV Counseling and Testing. All of this information will be collected through self-report questionnaires administered to program participants. All grantees will use two instruments, one for youth aged between 12 and 17 and one for adults aged 18 and older. The common design for participants in interventions lasting 30 days or longer includes assessments at baseline, program exit, and three to six months post-exit (follow-up). The common questionnaires will be administered to all 30-day intervention (program participants) youth and adults at baseline (first data collection point), program exit (second data collection point), and follow-up (third data collection point).For participants in interventions lasting between 2 and 29 days questionnaires will be administered at baseline and exit. For single session interventions an exit only questionnaire will be administered. See breakdown below:

| Intervention duration | Length | Definition | Sections of survey to be administered |
|---|---|---|---|
| Single Session Intervention. | 1 day or less ..... | A direct service intervention that lasts one day or less. Participants may receive multiple services during the session, but do not continue in a CSAP HIV grant funded activity for more than one day. | • Section One: Facts about You<br>• 3 to 5 questions from Section Two: Attitudes & Knowledge. |
| Multiple Session Brief Intervention. | Less than 30 days | The participant should receive at least two HIV Grant funded sessions or service encounters. The period of time between the first session or encounter and the last session or encounter should be two to 29 days. | • Section One: Facts about You<br>• Section Two: Attitudes & Knowledge. |
| Multiple Session Long Intervention. | 30 days or more ... | The participant should receive at least two HIV Grant funded sessions or service encounters. The period of time between the first session/encounter and the last session/encounter should be 30 days or more. | • Section One: Facts about You<br>• Section Two: Attitudes & Knowledge<br>• Section Three: Behavior & Relationships. |

The CSAP National Outcome Measures (NOMs) on the instruments have already been approved by OMB (OMB No. 0930–0230) will expire on 2/28/2013. These NOMs data are used to report on Government Performance and Results Act (GPRA) and findings across CSAP programs. For this program, these cross-site instruments are augmented with additional scales (currently approved under OMB No. 0930–0298 and expiring on 4/30/2012) to measure other important risk and protective factors uniquely associated with HIV/AIDS among minority populations and minority re-entry populations in communities of color. The youth (covering ages 12–17) questionnaire contains 128 questions, of which 28 relate to HIV/AIDS and the adult questionnaire contains 122 items, of which 47 relate to HIV/AIDS. Two new questions have been added to both the youth and adult questionnaires to address SAMHSA's need to collect information on binge drinking behavior, not covered under any prior OMB package. These questions are:

1. Females only: During the past 30 days, on how many days did you have 4 or more drinks on the same occasion?

2. Males only: During the past 30 days, on how many days did you have 5 or more drinks on the same occasion?

Procedures are employed to safeguard the privacy and confidentiality of participants. The cross-site evaluation results will have significant implications for the substance abuse and HIV/AIDS prevention fields, the allocation of grant funds, and other evaluation activities conducted by multiple Federal, State, and local government agencies. They will be used to develop Federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

**Total Estimates of Annualized Hour Burden**

The following table shows the estimated annualized burden for data collection.

TABLE 1a—ESTIMATES OF ANNUALIZED HOUR BURDEN BY INTERVENTION LENGTH

| Intervention length | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| 30-Days or More Intervention: | | | | | |
| Base line ..... | 7,937 | 1 | 7,937 | 0.83 | 6,588 |
| Exit ..... | 4,887 | 1 | 4,887 | 0.83 | 4,056 |
| Follow-up ..... | 2,942 | 1 | 2,942 | 0.83 | 2442 |
| Subtotal ..... | 7,937 | ..... | 15,766 | ..... | 13,086 |
| 2 to 29 Day Intervention: | | | | | |

TABLE 1a—ESTIMATES OF ANNUALIZED HOUR BURDEN BY INTERVENTION LENGTH—Continued

| Intervention length | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| Base line | 1,416 | 1 | 1,416 | 0.5 | 708 |
| Exit | 872 | 1 | 872 | 0.5 | 436 |
| Subtotal | 1,416 | | 2,288 | | 1,144 |
| Single Day Intervention: | | | | | |
| Exit | 2,458 | 1 | 2,458 | 0.25 | 614 |
| Annualized Total | 11,811 | | 20,512 | | 14,844 |

TABLE 1b—ESTIMATES OF ANNUALIZED HOUR BURDEN BY SURVEY TYPE

| Questionnaire | Number of respondents | Total responses | Total hour burden |
|---|---|---|---|
| Annualized total adult | 9,682 | 16,899 | 12,234 |
| Annualized Total Youth | 2,128 | 3,612 | 2,610 |
| Annualized Total | 11,811 | 20,512 | 14,844 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

**Summer King,**

*Statistician.*

[FR Doc. 2012–11905 Filed 5–16–12; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R3–ES–2012–N111; FXES11130300000F3–123–FF03E00000]**

## Endangered and Threatened Wildlife and Plants; Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

**DATES:** We must receive any written comments on or before June 18, 2012.

**ADDRESSES:** Send written comments by U.S. mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lisa Mandell, (612) 713–5343.

**SUPPLEMENTARY INFORMATION:**

### Background

We invite public comment on the following permit applications for certain activities with endangered species authorized by section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application to the address shown in **ADDRESSES.**

### Permit Applications

*Permit Application Number:* TE73584A.

*Applicant:* Illinois Natural History Survey, Champaign, IL.

The applicant requests a permit to take (capture and release; capture and relocate) the following endangered mussel species: clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma rangiana*), orangefoot pimpleback (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), sheepnose (*Plethobasus cyphyus*), spectaclecase (*Cumberlandia monodonta*), winged mapleleaf (*Quadrula fragosa*), fanshell (*Cyprogenia stegaria*), snuffbox (*Epioblasma triquetra*), Higgins' eye pearlymussel (*Lampsilis higginsii*), ring pink (*Obovaria retusa*), fat pocketbook (*Potamilus capax*), and rayed bean (*Villosa fabalis*). Proposed activities would occur throughout the State of Illinois, including presence/absence surveys and mussel relocation to enhance recovery of the species. Proposed activities are for the purpose of recovery of the species in the wild.

*Permit Application Number:* TE73587A.

*Applicant:* Missouri Department of Conservation, Jefferson City, MO.

The applicant requests a permit to take the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) in Missouri for the propagation, augmentation, and reintroduction of the species. Proposed activities are for the survival and recovery of the species in the wild.

*Permit Application Number:* TE73128A.

*Applicant:* Malacological Consultants, LaCrosse, WI.

The applicant requests a permit to take (capture and release; capture and relocate) Higgins' eye pearlymussel, fat pocketbook, winged mapleleaf, sheepnose, spectaclecase, scaleshell (*Leptodea leptodon*), and snuffbox mussels within the Upper Mississippi and Iowa Rivers, States of Minnesota, Wisconsin, Iowa, and Illinois. Proposed activities are for the enhancement of survival and recovery of the species in the wild.

*Permit Application Number:* TE73598A.

*Applicant:* Fowler Ridge Wind Farm, LLC, Houston, TX.

The applicant requests a permit to take (study, salvage, and monitor) the Indiana bat (*Myotis sodalis*) at the

Fowler Ridge Wind Farm, Benton County, IN. The applicant proposes to monitor the nocturnal behavior of bats in and around turbines utilizing an experimental design to determine susceptibility of bats to turbine mortality at varying wind speeds and operating protocols. The study is proposed to further understand bat interactions with turbines at multiple spatial and temporal scales and to determine the best combination of methods for detecting and observing interactions. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE74589A.

*Applicant:* Vesper Environmental, LLC, Hurley, NY.

The applicant requests a permit to take (capture and release) Indiana bats in Ohio, New York, Pennsylvania, West Virginia, Vermont, Maryland, and Massachusetts. Proposed activities are for the enhancement of survival of the species in the wild.

*Permit Application Number:* TE74592A.

*Applicant:* R. Jeffrey Brown, Mason, OH.

The applicant requests a permit to take (capture and release) Indiana bats, gray bats, Virginia big-eared bats, and Ozark big-eared bats throughout the range of the species. Proposed activities are for the enhancement of survival of the species in the wild.

## Public Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown 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.

Dated: May 10, 2012.

**Robert Krska,**

*Acting Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2012–11946 Filed 5–16–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R7–R–2012–N084; FF07R06000 FXRS12650700000Z2]**

## Kenai National Wildlife Refuge, Soldotna, AK; Environmental Impact Statement for the Shadura Natural Gas Development Project

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application for a proposed right-of-way within the Kenai National Wildlife Refuge (Refuge) under the Alaska National Interest Lands Conservation Act (ANILCA). We received the application from Nordaq Energy, Inc. for the Shadura Natural Gas Development Project (Project), which would involve construction and operation of facilities associated with the exploration and production of natural gas from the subsurface estate within the Refuge. We intend to gather information necessary to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) and its implementation regulations for the application. We are publishing this notice in compliance with NEPA regulations (40 CFR 1501.7) to advise other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the EIS.

**DATES:** *Meetings:* We will locally announce any future meeting dates, times, and locations, at least 10 days prior to each meeting.

*Comments:* Please provide any written comments, information, or suggestions on the scope of issues to address in the EIS by June 18, 2012.

**ADDRESSES:** Additional information concerning the Project can be found at:

- *http://kenai.fws.gov/current.htm*
- *http://alaska.fws.gov/nwr/planning/nepa.htm*

Refuge information may be found at:

- *http://www.fws.gov/refuges/profiles/index.cfm?id=74525.*

Send your comments or requests for information by any of the following methods to:

- *Email: fw7_kenai_planning@fws.gov;*
- *Fax:* Attn: Peter Wikoff, (907) 786–3976;
- U.S. Mail: Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503.

**FOR FURTHER INFORMATION CONTACT:** Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, at (907) 786–3357, or at the address above.

**SUPPLEMENTARY INFORMATION:** We have received an application for, and intend to prepare an environmental impact statement (EIS) for, a proposed right-of-way within the Refuge. The right-of-way would be in compliance with Section 1110(b) of ANILCA, regarding access to inholdings, for the construction and operation of facilities associated with the exploration and production of natural gas from the subsurface estate within the Refuge. The Service owns the surface estate, and Cook Inlet Region, Inc. (CIRI) owns the subsurface estate of coal, oil, and gas in the project area. The Project would be in the northwestern portion of the Kenai Peninsula, approximately 4 miles southeast of the end of the road in Captain Cook State Recreation Area in T8N, R10W. The application is being made by NordAq Energy, Inc., the holder of the lease from CIRI for the area.

This notice advises the public that we have started preliminary scoping and intend to gather information necessary to develop an EIS. A third-party contractor will prepare the EIS and evaluate the various alternatives associated with the Project pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.; NEPA) and its implementing regulations (40 CFR 1500 et seq.). The EIS will describe and evaluate a range of reasonable alternatives and the anticipated impacts of each. We are publishing this notice in compliance with the NEPA regulations (40 CFR 1501.7) to advise other agencies and the public of our intentions and to obtain suggestions and information on the scope of issues to be addressed in the EIS.

## Public Input and Meetings

Special mailings, newspaper advertisements, and other media announcements will inform the public of opportunities to provide written input throughout the planning process. Public meetings were held on March 20, 2012, in, Kenai, Alaska, and on March 22, 2012, in Anchorage. In local media, we will announce additional public meetings to be held in the cities of Kenai and Anchorage. Information pertaining to the right-of-way application for the project is available for viewing and downloading at *http://kenai.fws.gov/current.htm* or *http://alaska.fws.gov/nwr/planning/nepa.htm.*

## Refuge Information

The Refuge covers approximately two million acres on the Kenai Peninsula in

south-central Alaska. It is readily accessible by road from the city of Anchorage, which is home to 41.5 percent of Alaska's population. The Refuge consists of the western slopes of the Kenai Mountains and forested lowlands bordering Cook Inlet. The Kenai Mountains, with their glaciers, rise to more than 6,500 feet. Treeless alpine and subalpine habitats are home to mountain goats, Dall sheep, caribou, wolverine, marmots, and ptarmigan. Boreal forests extend from sea level to 1,800 feet and are composed of spruce and birch forests, which on the Refuge are intermingled with hundreds of lakes. Boreal forests are home to moose, wolves, black and brown bears, lynx, snowshoe hares, and numerous species of Neotropical birds, such as olive-sided flycatchers, myrtle warblers, and ruby crowned kinglets. At sea level, the Refuge encompasses the last remaining pristine major saltwater estuary on the Kenai Peninsula, the Chickaloon River Flats. The Flats provide a major migratory staging area and nesting habitat for shorebirds and waterfowl throughout the spring, summer, and fall. The Flats are also used as a haul-out area by harbor seals. Thousands of salmon migrate up the Chickaloon River system each year to spawn.

While the Service owns the land surface within the Refuge, portions of the subsurface estate have been transferred to CIRI. CIRI was established by the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 et seq.). Under authority of ANCSA, Congress granted CIRI the subsurface oil, gas, and coal estate to nearly 200,000 acres within the Refuge. The State of Alaska also owns lands adjacent to the Refuge (Captain Cook State Recreation Area). ANILCA Section 1110 (b) requires that the Service provide for reasonable access to the subsurface estate. CIRI has previously leased other portions of its subsurface estate within the Refuge. Oil and gas are currently being produced from other production units within the Refuge.

The Alaska National Interests Land Conservation Act of 1980 (Section 303[4]) established the Refuge from the Kenai Moose Range and other lands and set forth the following major purposes for which the Refuge was to be managed:

(i) To conserve fish and wildlife populations and habitats in their natural diversity, including, but not limited to, moose, bear, mountain goats, Dall sheep, wolves, and other furbearers; salmonoids and other fish; waterfowl and other migratory and nonmigratory birds;

(ii) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge;

(iv) To provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

(v) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife–oriented recreation.

### 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 to withhold it from public view, we cannot guarantee we will be able to do so.

Dated: May 11, 2012.

**Geoffrey L. Haskett,**

*Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.*

[FR Doc. 2012–11942 Filed 5–16–12; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R9–EA–2012–N115; FF09X60000–FVWF979209000005D–XXX]**

## Sport Fishing and Boating Partnership Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

**DATES:** The meeting will take place Tuesday, June 5, 2012; 8:30 a.m. to 5 p.m. and Wednesday, June 6, 2012; 8:30 a.m. to 3:30 p.m. (Eastern daylight time). For deadlines and directions on registering to attend the meeting, submitting written material, and/or giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held in the North Penthouse of the Department of the Interior building at 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or email *doug_hobbs@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting.

### Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc.*

### Meeting Agenda

The Council will hold a meeting to consider:

- Issues for inclusion in the Council Strategic Work Plan for the 2012–2014 term.

• Issues regarding the Boating Infrastructure Grant Program, Clean Vessel Act Grant Program, and the Sport Fish Restoration Boating Access Program.

• An update on FWS progress in implementing the Council's assessment of the Service's Fisheries Program and the Council's effort to assist the Fisheries Program in revising and updating its program Vision and Strategic Plan.

• Discussion with members of the Federal Interagency Council on Outdoor Recreation (FICOR) regarding Council comments to FICOR for consideration in implementing the America's Great Outdoors Initiative.

• An update from the Recreational Boating & Fishing Foundation on progress in implementing Council recommendations to improve the activities and operations of the Foundation.

• An update on the implementation of the National Ocean Policy.

• An update on activities of the Service's Wildlife and Sport Fish Restoration Program.

• Other miscellaneous Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

**Public Input**

| If you wish to | Then you must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Attend the meeting | Monday, May 28, 2012. |
| Submit written information or questions before the meeting for the council to consider during the meeting | Wednesday, May 30, 2012. |
| Give an oral presentation during the meeting | Monday, May 28, 2012. |

*Attendance*

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed above in ''Public Input.'' Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the meeting. Written statements must be received by the date listed above in ''Public Input,'' so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation during the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. To ensure an opportunity to speak during the public comment period of the meeting, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

**Meeting Minutes**

Summary minutes of the meeting will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 120 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

**Rowan W. Gould,**

*Director.*

[FR Doc. 2012–11997 Filed 5–16–12; 8:45 am]

**BILLING CODE 4310–55–P**

## INTERNATIONAL TRADE COMMISSION

**[INVESTIGATION NO. 332–528]**

### Used Electronic Products: An Examination of U.S. Exports Submission of Questionnaire for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) has submitted a request for approval of a questionnaire to the Office of Management and Budget for review. Purpose of Information Collection: The form is for use by the Commission in connection with Investigation No. 332–528, *Used Electronic Products: An Examination of U.S. Exports,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR by February 8, 2013.

**Summary of Proposal**

(1) Number of forms submitted: 1.

(2) Title of form: Electronic Products Questionnaire.

(3) Type of request: New.

(4) Frequency of use: Industry questionnaire, single data gathering, scheduled for 2012.

(5) Description of respondents: U.S. firms in the used electronics processing industry.

(6) Estimated number of questionnaires to be mailed: 5,500.

(7) Estimated total number of hours to complete the form per respondent: 2.5 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the form and supporting documents may be obtained from project leader Laura Bloodgood (*laura.bloodgood@usitc.gov* or 202–708–4726) or deputy project leader Andrea Boron (*andrea.boron@usitc.gov* or 202–205–3433). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library),

Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revision or language changes. Copies of any comments should be provided to Andrew Martin, Chief Information Officer, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the form and supporting documents should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). Also, general information about the Commission can be obtained from its internet site (*http://www.usitc.gov*).

By order of the Commission.

Issued: May 11, 2012.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2012–11894 Filed 5–16–12; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 10, 2012, a proposed Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Bayer CropScience Inc. et al.,* Civil Action No. 1:12–cv–10847–WGY. In this action, the United States filed a complaint, also on May 10, 2012, under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a), alleging that Bayer CropScience Inc. and Pharmacia Corporation (''Settling Defendants'') are liable for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss, at the Industri-plex Superfund Site, located in Woburn, Massachusetts. The Commonwealth of Massachusetts filed a similar complaint on the same date. *Commonwealth of Massachusetts* v. *Bayer CropScience Inc. et al.,* Civil Action No. 1:12–cv–10849. At the same time as it filed its complaint, the United States lodged a proposed Consent Decree, entered into by the United States, the Commonwealth of Massachusetts, and the Settling Defendants, which resolves those claims and which requires the Settling Defendants to (a) pay $3,812,127 to the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, to be used by the federal and state natural resource trustees to implement natural resource restoration projects and to reimburse their administrative costs associated with such projects, (b) pay $357,319 to the United States to reimburse the United States Department of the Interior for its assessment costs, (c) pay $42,815 to the United States to reimburse the National Oceanic and Atmospheric Administration for its assessment costs, and (d) pay $37,739 to the Commonwealth of Massachusetts to reimburse the Massachusetts Executive Office of Energy and Environmental Affairs for its assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bayer CropScience Inc.,* D.J. Ref. 90–11–2–228/7. Comments may also be submitted by email to *pubcomment-ees.enrd@usdoj.gov.* A copy of the comments should be sent to Donald G. Frankel, Senior Counsel, Environmental Enforcement Section, Department of Justice, Suite 616, One Gateway Center, Newton, MA 02458 (*donald.frankel@usdoj.gov*).

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or email, forward a check to the Consent Decree library at the address stated above).

**Ronald G. Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–11907 Filed 5–16–12; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF LABOR

### Scientific Integrity: Statement of Policy

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Extension of Comment Period.

**SUMMARY:** The Department of Labor (DOL) is extending the time period for receipt of comments in response to its solicitation of comments on its draft Scientific Integrity Policy, originally published April 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** E. Christi Cunningham, Associate Assistant Secretary for Regulatory Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210, *cunningham.christi@dol.gov,* (202) 693–5959; (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** On April 17, 2012, DOL published a notice in the **Federal Register** requesting comments on its draft Scientific Integrity Policy with a deadline for receiving comments of May 11, 2012. (See **Federal Register** Volume 77, Number 74, Pages 22805–22806.) Today, the Department is extending the date for receipt of comments to May 18, 2012. DOL is developing its policy on Scientific Integrity in response to the March 9, 2009, Presidential Memorandum on Scientific Integrity, and the December 17, 2010, Memorandum from the Director of the Office of Science and Technology Policy. DOL is soliciting comments on its draft policy using an Internet portal specifically designed to capture your input and suggestions, *http://dolscientificintegrity.ideascale.com/.* This portal contains a series of questions designed to gather information on how DOL can best meet the requirements of these memoranda. The ability to comment using the portal has remained uninterrupted since it was first made available for use.

The Department of Labor is issuing this request solely to seek useful information as it develops its policy. While responses to this request do not bind the Department of Labor to any further actions related to the responses,

all submissions will be made available to the public for inspection on *http://dolscientificintegrity.ideascale.com/.*

**DATES:** Comments must be received by midnight May 18, 2012.

**ADDRESSES:** You may submit comments through *http://dolscientificintegrity.ideascale.com/.*

**E. Christi Cunningham,**

*Associate Assistant Secretary for Regulatory Affairs.*

[FR Doc. 2012–11996 Filed 5–16–12; 8:45 am]

**BILLING CODE 4510–22–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,066]**

### Conocophillips Company, Trainer Refinery, Trainer, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated March 26, 2012, the United Steel Workers Union requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of ConocoPhillips Company, Trainer Refinery, Trainer, Pennsylvania (subject firm). The determination was issued on February 7, 2012. The Notice of determination was published in the **Federal Register** on February 28, 2012 (77 FR 12084).

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports by the workers' firm or its customer, nor was there a shift in production to a foreign country or acquisition of production from a foreign country by the workers' firm. In addition, U.S. aggregate imports of like or directly competitive articles did not increase during the relevant period.

The request for reconsideration alleges that worker separations at the subject firm are related to increased imports of refined petroleum products like or directly competitive with those produced by the subject firm, and that, while the initial investigation revealed that U.S. aggregate imports of refined petroleum products decreased during the relevant period, the Department did not compare domestic production to U.S. imports.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

#### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 30th day of April 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11902 Filed 5–16–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,145; TA–W–81,145A]**

### Sunoco, Inc., R&M Refining Division, Marcus Hook, PA; Sunoco, Inc., 10 Industrial Hwy, MS4 Building G, Lester, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated March 26, 2012, the United Steel Workers Union requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Sunoco, Inc., Refining Division, Marcus Hook, Pennsylvania (TA–W–81,145), and Sunoco, Inc., Lester, Pennsylvania (TA–W–81,145A). The determination was issued on February 7, 2012, and the Department's Notice of Determination was published in the **Federal Register** on February 28, 2012 (77 FR 12084).

The initial investigation resulted in a negative determination based on the findings that there was no increase in imports by the workers' firm or its customer, nor was there a shift in production to a foreign country or acquisition of production from a foreign country by the workers' firm. In addition, U.S. aggregate imports of like or directly competitive articles did not increase during the relevant period.

The request for reconsideration alleges that the worker separations at the subject facilities are related to increased imports of refined petroleum products like or directly competitive with those produced by the subject firm, and that, while the initial investigation revealed that U.S. aggregate imports of refined petroleum products decreased during the relevant period, the Department did not compare domestic production to U.S. imports. The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

#### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 30th day of April, 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11901 Filed 5–16–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–81,299]**

### Kohler Company, Malvern Division, Including On-Site Leased Workers From Manpower Staffing and Dow Cleaning Services, Malvern, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 9, 2012, applicable to workers of Kohler Company, Malvern Division, Malvern, Arkansas, including on-site leased workers from Manpower Staffing. The Department's notice of determination was published in the **Federal Register** on March 26, 2012 (77 FR 17527).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of faucets, drains, and components.

The company reports that workers from Dow Cleaning Services were employed on-site at the Malvern, Arkansas location of Kohler Company, Malvern Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Dow Cleaning Services working on-site at the Malvern, Arkansas location of Kohler Company, Malvern Division.

The amended notice applicable to TA–W–81,299 is hereby issued as follows:

All workers of Kohler Company, Malvern Division, including on-site leased workers from Manpower Staffing and Dow Cleaning Services, Malvern, Arkansas, who became totally or partially separated from employment on or after February 6, 2011 through March 9, 2014, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 30th day of April 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11898 Filed 5–16–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–80,278]**

### Wells Fargo Bank, N.A. Subsidiary of Wells Fargo & Company Home Mortgage Division Including On-Site Leased Workers From Aerotek, Inc., Employee Relations Associates, Manpower, Spherion, and on Call Staffing Solutions, Costa Mesa, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 1, 2011, applicable to workers of Wells Fargo Bank, N.A., Subsidiary of Wells Fargo & Company, Home Mortgage Division, including on-site leased workers from Aerotek, Inc., Employee Relations Associate, Manpower, and Spherion, Costa Mesa, California (subject firm). The Department's Notice of determination was published in the **Federal Register** on December 13, 2011 (76 FR 77558).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the supply of mortgage underwriting services.

The subject firm reports that workers from On Call Staffing Solutions were employed on-site at the subject firm. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Based on these findings, the Department is amending this certification to include workers from On Call Staffing Solutions working on-site at the subject firm.

The amended notice applicable to TA–W–80,278 is hereby issued as follows:

All workers of Wells Fargo Bank, N.A., Subsidiary of Wells Fargo & Company, Home Mortgage Division, including on-site leased workers from Aerotek, Inc., Employee Relations Associate, Manpower, Spherion, and On Call Staffing Solutions, Costa Mesa, California, who became totally or partially separated from employment on or after July 6, 2010 through December 1, 2013, and all workers in the group threatened with total or partial separation from employment on December 1, 2011 through December 1, 2013, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 30th day of April 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11904 Filed 5–16–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,897]**

### Chicopee Inc., a Subsidiary of Polymer Group, Inc., Including On-Site Leased Workers From Manpower Staffing, North Little Rock, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 6, 2012, applicable to workers and former workers of Chicopee, Inc., a subsidiary of Polymer Group, Inc., including on-site leased workers from Manpower Staffing, North Little Rock, Arkansas (subject firm). The Notice of determination was published in the **Federal Register** on February 16, 2010 (75 FR 7036). The workers are engaged in employment related to the production of non-woven roll goods.

On March 19, 2012, the State of Arkansas filed a petition on behalf of maintenance workers at the subject firm (TA–W–81,428). During the investigation of TA–W–81,428, the Department determined that there was a causal nexus between subject firm's closure and the workers' separations and that, therefore, worker separations through March 1, 2012 are attributable to conditions specified in the Trade Act of 1974, as amended. The Department has also determined that, given the particular facts presented, it is appropriate to amend this certification to include workers who, due to the subject firm's compliance of federal regulations, were separated after January 6, 2012.

The Department's decision in this case is limited to the precise circumstances of this specific case and should not be considered as any indication of how the Department would proceed in other cases or in other subsequent rulemaking on this subject.

The amended notice applicable to TA–W–71,897 is hereby issued as follows:

All workers from Chicopee, Inc., a subsidiary of Polymer Group, Inc., including on-site leased workers from Manpower Staffing, North Little Rock, Arkansas, who became totally or partially separated from employment on or after July 31, 2008, through March 1, 2012, and all workers in the group threatened with total or partial separation from employment on January 6, 2010 through March 1, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1074, as amended.

Signed at Washington, DC, this 30th day of April 2012.

**Del Min Amy Chen,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11903 Filed 5–16–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued

during the period of *April 23, 2012 through April 27, 2012.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,180 | Sagoma Technologies, A Subsidiary of PTG LLC | Biddeford, ME | February 13, 2010. |
| 81,432 | G4 Products, LLC, G4 Holdings, Inc., OSW and Maine Staffing Group | Lewiston, ME | March 19, 2011. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,341 | AAA Northern California, Automotive Service Delivery Division, Accounting Services, PRO Unlimited. | Walnut Creek, CA | February 14, 2011. |
| 81,349 | Alcatel-Lucent USA, Inc., D/B/A Alcatel-Lucent, Alcatel-Lucent Holdings, Hardware Supply Chain. | Charlotte, NC | February 17, 2011. |
| 81,382 | Vector Engineering, Inc., D/B/A Ausenco Vector, Finance and Accounting Team. | Grass Valley, CA | February 28, 2011. |
| 81,449 | RR Donnelley, A Subsidiary of RR Donnelley & Sons Company | Glen Mills, PA | March 22, 2011. |
| 81,453 | Crawford & Company, ICT Help Desk | Lake Zurich, IL | March 23, 2011. |
| 81,453A | Crawford & Company, ICT Help Desk | Atlanta, GA | March 23, 2011. |
| 81,453B | Crawford & Company, ICT Help Desk | Sunrise, FL | March 23, 2011. |
| 81,459 | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Dallas, TX | March 29, 2011. |
| 81,459A | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Agoura Hills, CA | March 29, 2011. |
| 81,459B | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Albuquerque, NM | March 29, 2011. |
| 81,459C | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Atlanta, GA | March 29, 2011. |
| 81,459D | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Austin, TX | March 29, 2011. |
| 81,459E | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Boulder, CO | March 29, 2011. |
| 81,459F | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Chattanooga, TN | March 29, 2011. |
| 81,459G | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Denver, CO | March 29, 2011. |
| 81,459H | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Hazelwood, MO | March 29, 2011. |
| 81,459I | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Lexington, KY | March 29, 2011. |
| 81,459J | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Portage, MI | March 29, 2011. |
| 81,459K | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Poughkeepsie, NY | March 29, 2011. |
| 81,459L | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Garyville, LA | March 29, 2011. |
| 81,459M | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Rochester, NY | March 29, 2011. |
| 81,459N | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | San Jose, CA | March 29, 2011. |
| 81,459O | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Smyrna, GA | March 29, 2011. |
| 81,459P | International Business Machines (IBM), Problem, Change & Recovery Management, 07 Service Delivery Division. | Southbury, CT | March 29, 2011. |
| 81,481 | Quest Enterprises, Inc., Viking Life-Saving Equipment | Walsenburg, CO | April 5, 2011. |
| 81,495 | XIUS Corporation, f/k/a Cellular Express, Inc | Woburn, MA | April 11, 2011. |

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,436 | Hewlett Packard Enterprise Services, General Motors Shreveport Assembly Account, Radiant Systems. | Shreveport, LA | March 15, 2011. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,411 | Franklin Building Materials, LLP | El Paso, TX. | |

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,376 | Stanley Black and Decker, Construction & DIY, Retail Specialists/Sales, Located in Several States. | Towson, MD. | |
| 81,410 | Alpha Warehouse, Inc., D/B/A Auto Value | El Paso, TX. | |
| 81,412 | Kraft Foods Global, Inc., Oscar Mayer Division | Coshocton, OH. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,526 | Philips Healthcare/Respironics | Murrysville, PA. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 81,488 | StarTek USA, Inc. | Greeley, CO. | |

I hereby certify that the aforementioned determinations were issued during the period of *April 23, 2012 through April 27, 2012.* These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 3, 2012.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2012–11899 Filed 5–16–12; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of May 2012.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

APPENDIX

[28 TAA petitions instituted between 4/23/12 and 4/27/12]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of Petition |
|---|---|---|---|---|
| 81525 | Parkdale Mills—Plant #42 (Company) | Lavonia, GA | 04/23/12 | 04/09/12 |
| 81526 | Philips Healthcare/Respironics (Workers) | Murrysville, PA | 04/23/12 | 03/15/12 |
| 81527 | Alliant Techsystems, Inc. (ATK) (Workers) | Radford, VA | 04/24/12 | 04/18/12 |
| 81528 | McKesson Corporation (Workers) | San Francisco, CA | 04/24/12 | 04/12/12 |
| 81529 | WellPoint, Inc., Central Region Service Operations, Enrollment and Billing (Company). | 4 Locations in IN, KY and OH;,. | 04/24/12 | 04/23/12 |
| 81530 | Allied Tube & Conduit (Union) | Morrisville, PA | 04/24/12 | 04/23/12 |
| 81531 | American Achievement Corporation (Company) | Austin, TX | 04/24/12 | 04/23/12 |
| 81532 | Verizon Data Services, LLC (Workers) | Temple Terrace, FL | 04/24/12 | 04/14/12 |
| 81533 | CDR Systems Corp. (Company) | Estherville, IA | 04/25/12 | 04/24/12 |
| 81534 | Yale Locks & Hardware (Company) | Lenoir City, TN | 04/25/12 | 04/18/12 |
| 81535 | Cardinal Glass Industries TG (Company) | Chehalis, WA | 04/26/12 | 04/25/12 |
| 81536 | Cannon Equipment (Company) | Chattanooga, TN | 04/26/12 | 04/25/12 |
| 81537 | BASF Corporation (State/One-Stop) | Southfield, MI | 04/26/12 | 04/25/12 |
| 81538 | State Journal Register (State/One-Stop) | Springfield, IL | 04/26/12 | 04/25/12 |
| 81539 | Philips Healthcare/Respironic (Workers) | Murrysville, PA | 04/26/12 | 04/25/12 |
| 81540 | Rock Creek Athletics, Inc., 203 6th Avenue West, a subsidiary of Neff Motive (State/One-Stop). | Grinnell, IA | 04/26/12 | 04/24/12 |
| 81541 | Extrusion Technologies (State/One-Stop) | Randolph, MA | 04/26/12 | 04/25/12 |
| 81542 | Silver City Aluminum (State/One-Stop) | Taunton, MA | 04/26/12 | 04/25/12 |
| 81543 | Armstrong World Industries (State/One-Stop) | Center, TX | 04/26/12 | 04/25/12 |
| 81544 | Electronics Research, Inc. (Company) | Gray, ME | 04/27/12 | 04/26/12 |
| 81545 | Alexandria Industries (State/One-Stop) | Alexandria, MN | 04/27/12 | 04/26/12 |
| 81546 | Lawson Software Inc., dba Infor Lawson (State/One-Stop) | St. Paul, MN | 04/27/12 | 04/26/12 |
| 81547 | Joerns Healthcare, LLC (Company) | Stevens Point, WI | 04/27/12 | 04/25/12 |
| 81548 | Stanley Furniture Company, Inc. (Company) | Stanleytown, VA | 04/27/12 | 04/26/12 |
| 81549 | Walgreens Specialty Pharmacy (Workers) | Ann Arbor, MI | 04/27/12 | 04/26/12 |
| 81550 | Mersen (State/One-Stop) | Greenville, MI | 04/27/12 | 04/25/12 |
| 81551 | National Spinning Co. Inc. (Workers) | Washington, NC | 04/27/12 | 04/19/12 |
| 81552 | Aon Hewitt (State/One-Stop) | Lincolnshire, IL | 04/27/12 | 04/17/12 |

[FR Doc. 2012–11900 Filed 5–16–12; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision for the collection of the ''BLS Data Sharing Program.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 16, 2012.

**ADDRESSES:** Send comments to Amelia Vogel, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments may be transmitted by fax to 202–691–5111. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Amelia Vogel, BLS Clearance Officer, 202–691–6138. (See Addresses section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

An important aspect of the mission of the BLS is to disseminate to the public the maximum amount of information possible. Not all data are publicly available because of the importance of maintaining the confidentiality of BLS data. However, the BLS has opportunities available on a limited basis for eligible researchers to access confidential data for purposes of conducting valid statistical analyses that further the mission of the BLS as permitted in the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). The BLS makes confidential data available to eligible researchers through three major programs:

1. The Census of Fatal Occupational Injuries (CFOI), as part of the BLS occupational safety and health statistics program, compiles a count of all fatal work injuries occurring in the U.S. in each calendar year. Multiple sources are used in order to provide as complete and accurate information concerning workplace fatalities as possible. A research file containing CFOI data is made available offsite to eligible researchers.

2. The National Longitudinal Surveys of Youth (NLSY) is designed to document the transition from school to work and into adulthood. The NLSY collects extensive information about youths' labor market behavior and educational experiences over time. The NLSY includes three different cohorts: The National Longitudinal Survey of Youth 1979 (NLSY79), the NLSY79

Young Adult Survey, and the National Longitudinal Survey of Youth 1997 (NLSY97). NLSY data beyond the public use data are made available in greater detail through an offsite program to eligible researchers.

3. Additionally, the BLS makes available data from several employment, compensation, prices, and working conditions surveys to eligible researchers for onsite use. Eligible researchers can access these data in researcher rooms at the BLS national office in Washington, DC

**II. Current Action**

Office of Management and Budget clearance is being sought for the BLS Data Sharing Program. In order to provide access to confidential data, the BLS must determine that the researcher's project will be exclusively statistical in nature and that the researcher is eligible based on guidelines set out in CIPSEA, the Office of Management and Budget (OMB) implementation guidance on CIPSEA, and BLS policy. This information collection provides the vehicle through which the BLS will obtain the necessary details to ensure all researchers and projects comply with appropriate laws and policies.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Type of Review:* Revision.
*Agency:* Bureau of Labor Statistics.
*Title:* BLS Data Sharing Program.
*OMB Number:* 1220–0180.
*Affected Public:* Individuals.

| Form | Total respondents | Frequency | Total responses | Average time per response | Estimated total burden hours |
|---|---|---|---|---|---|
| CFOI Application | 10 | On occasion | 10 | 35 minutes | 6 |
| NLS Application | 134 | On occasion | 134 | 30 minutes | 67 |
| Onsite Researcher Application. | 28 | On occasion | 28 | 20 hours | 560 |
| Totals | 172 | | 172 | | 633 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: Signed at Washington, DC, this 14th day of May 2012.

**Kimberley D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2012–11983 Filed 5–16–12; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket Number: OSHA–2012–0020]**

## Whistleblower Protection Advisory Committee (WPAC)

**AGENCY:** Occupational Safety and Health Administration (OSHA), DOL.

**ACTION:** Notice of establishment of the Whistleblower Protection Advisory Committee (WPAC).

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, as amended (5. U.S.C., App. 2), the Secretary of Labor intends to establish the Whistleblower Protection Advisory Committee (WPAC).

The WPAC advises, consults with, and makes recommendations to the Secretary of Labor (Secretary) and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on ways to improve the fairness, efficiency, effectiveness and transparency of OSHA's whistleblower protection activities.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* Mr. Francis Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: (202) 693–1999. This is not a toll-free number. Email: *meilinger.francis2@dol.gov.*

*For general information:* Sandra Dillon, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. Email: *dillon.sandra@dol.gov.*

**SUPPLEMENTARY INFORMATION:** With this **Federal Register** notice, the Assistant Secretary notifies the public of the establishment of Whistleblower Protection Advisory Committee (WPAC). WPAC's duties will be solely advisory and consultative. WPAC will advise, consult with, and make recommendations to the Secretary and the Assistant Secretary on ways to improve the fairness, efficiency, effectiveness, and transparency of OSHA's whistleblower protection activities. In particular, WPAC will make recommendations regarding the development and/or implementation of:

- Better customer service to both workers who raise complaints and employers who are the subject of investigations;
- Improvement in the investigative and enforcement process, and the training of OSHA investigators;
- Improvement of regulations governing OSHA investigations;
- Cooperative activities with federal agencies responsible for areas also covered by the whistleblower protection statutes enforced by OSHA; and
- Other matters concerning the fairness, efficiency and transparency of OSHA's whistleblower investigations as

identified by the Secretary or the Assistant Secretary.

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), chapter 1600 of Department of Labor Management Series 3 (Mar. 17, 2008), Secretary of Labor's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c); the Surface Transportation Assistance Act, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610; the Energy Reorganization Act, 42 U.S.C. 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. 60129; the Federal Railroad Safety Act, 49 U.S.C. 20109; the National Transit Systems Security Act, 6 U.S.C. 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. § 2087; Section 1558 of the Affordable Care Act, Public Law 111–148; the Consumer Financial Protection Act of 2010, 12 U.S.C.A. 5567; the Seaman's Protection Act, 46 U.S.C. 2114; and Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353.

Signed at Washington, DC on May 14, 2012.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012–11982 Filed 5–16–12; 8:45 am]

BILLING CODE 4510–26–P

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 12–05]**

## Notice of Entering Into a Compact With the Republic of Zambia

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Zambia. Representatives of the United States Government and the Republic of Zambia executed the Compact documents on May 10, 2012.

Dated: May 14, 2012.

**Melvin F. Williams, Jr.,**

*VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.*

### Summary of Millennium Challenge Compact With the Republic of Zambia

The five-year, $354.8 million Compact with the Republic of Zambia is aimed at reducing poverty through economic growth (the ''Compact''). The Compact addresses one of Zambia's most binding constraints to economic growth through investment in the water sector (i.e., water supply, sanitation, and drainage systems). The Compact is designed to build on more than 15 years of water sector reform through which Zambia has developed a strong, commercially-operated utility, an independent regulator and a sound legal and regulatory structure. Through these reforms, the Government of Zambia (the ''Government'') has established a firm foundation for a Compact targeted to assist the nation's rapidly urbanizing capital of Lusaka. MCC investments are designed to continue the Government's sector reform efforts through institutional strengthening to improve the health and economic productivity of more than 1.2 million Lusaka residents and to help the country reduce poverty on a sustainable basis. The Compact has an economic rate of return of approximately 13.7 percent.

*1. Background*

Zambia continues to strengthen its democracy as evidenced most recently by free and fair elections and the smooth and peaceful transition of power in 2011 from the ruling party to the main opposition party. The country has also experienced nearly six percent real GDP growth over the last ten years, inflation has moderated, and the exchange rate has become increasingly stable and competitive. Despite these positive outcomes, the incidence of poverty nationwide, driven in part by widespread water-related disease, remains high at 82 percent of the population based on a $2 per day poverty line.

At independence in 1964, Lusaka's population was just over 100,000, representing less than four percent of the country's population. The city of Lusaka currently has a population of over 1.8 million people, representing over 10 percent of Zambia's total population and is projected to have nearly five million residents by 2035. This rapidly increasing population is served by a water supply and sanitation and drainage system constructed in the 1960s and 1970s to serve a much smaller population.

While the sector has seen a major investment in policy and institutional reform over the past 15 years, the municipal water system has not benefited from major capital investment in the intervening years. As a result, the system's core infrastructure assets are outdated, dilapidated and unable to meet current or future demand. This contributes to a high prevalence and incidence of water-related diseases, which is exacerbated by endemic flooding resulting from insufficiently maintained and inadequate drainage infrastructure. For example, Lusaka's infectious diarrhea rate (including cholera) is estimated at 138 per 1,000 residents, while the city's malaria rate is estimated at 120 per 1,000 residents. In addition to poor health, the degraded and inadequate condition of the system's core infrastructure forces Lusaka's residents and businesses to waste substantial time and resources seeking alternative sources of water, as well as incurring lost time and property damage due to flooding, resulting in further losses to productivity and well-being.

*2. Program Overview and Budget*

The Compact program is designed to address this constraint to economic growth by supporting infrastructure investments and continued institutional strengthening and reform in order to expand access to, and improve the reliability of, water supply and sanitation and to improve drainage services in select urban and peri-urban areas of Lusaka.

To that end, the Compact includes a single-sector Water Supply, Sanitation,

and Drainage Project (the ''Project'') comprised of two activities: (i) The Infrastructure Activity, and (ii) the Institutional Strengthening Activity. MCC's corporate priorities of policy reform, gender integration and private sector engagement have been captured in the Compact design of both activities. To mitigate the risk of a slow down or reversal of the Government's ongoing sector reforms efforts, the Compact includes an agreement from the Government to enter into a ''Sustainability Agreement'' with operational, financial and sector milestones tied to funding disbursements to ensure ongoing reforms continue. The Government has also agreed in the Compact to fund, install and make operational pre-paid meters at each Government institutional customer. This will help ensure the continued sector performance and financial strength of partner institutions.

The following table presents the allocation of funding across the Compact.

| Project and activities | Budget ($ millions) |
|---|---|
| Water Supply, Sanitation, and Drainage Project | $310.6 |
| Monitoring & Evaluation | 5.8 |
| Program Administration | 38.4 |
| Total | 354.8 |

*3. Summary of the Project's Activities*

*Infrastructure Activity:* This activity incorporates interventions designed to support infrastructure managed by: (i) The Lusaka Water and Sewerage Company (LWSC), the utility primarily responsible for managing the city's water and sanitation infrastructure; and (ii) Lusaka City Council (LCC), the local government entity responsible for managing Lusaka's drainage infrastructure. A major portion of the investment is focused on rehabilitation of Lusaka's core water supply network, including components designed specifically to reduce non-revenue water. This activity also includes interventions designed to expand the city's water supply network; rehabilitate and enlarge select sewer networks; improve select drainage infrastructure; and provide support for engineering and resettlement professional services.

Each of the water supply and sanitation components was considered based on the results of investment master plans supported by MCC during the Compact development process, which chart a three-phase, more than $3.0 billion overall plan through which Lusaka can meet the needs of its current and future projected population through 2035. The drainage component was selected based on the results of priorities identified in a separate comprehensive urban development plan funded by Japanese International Cooperation Agency. All components were also selected based on the results of substantially completed feasibility studies.

*Institutional Strengthening Activity:* In addition to the infrastructure improvements, the Compact includes investments to support sector and institutional strengthening for both LWSC and LCC. The institutional strengthening activity builds on more than 15 years of reform in the water and sanitation sector—during which Zambia has developed a viable commercial utility, an independent regulator, and a sound legal and regulatory structure. This activity will provide technical assistance to LWSC and LCC to continue ongoing Government sector reform efforts and pursue new ones designed to ensure improved sector management and sustainability of MCC investments. This activity includes support for better asset and environmental management by LWSC. It also provides technical assistance for LCC to improve its strategic planning and to conduct better maintenance and environmental management for the city's drainage network. Further, support under this activity will be provided to LWSC and LCC for mainstreaming gender policies; improving service delivery to poor and underserved populations; and carrying out well-designed and coordinated information, education and communications (IEC) campaigns. The activity will include efforts to increase innovation in pro-poor service delivery in the water sector through, among other possibilities, grants to community-based organizations, civil society and/or private sector entities to enhance and support the Compact's sustainability through an innovation grant component.

The Compact also includes program administration costs estimated at $38.4 million over a five-year timeframe, including the costs of administration, management, auditing, and fiscal and procurement services. In addition, the cost of monitoring and evaluation of the Compact is budgeted at $5.8 million.

*4. Expected Results, Beneficiaries, and Benefits*

The Compact aims to increase incomes in Lusaka by creating conditions for a healthier population, which would result in more time available for productive economic activity. More specifically, in addressing health conditions, the investment seeks to have significant impact on reducing: (i) The incidence and prevalence of water-related diseases; (ii) productive days lost due to water-borne and water-related diseases; (iii) the cost of water and new sanitation connections (for some beneficiaries); (iv) the time to collect water; and (v) business and residential flood losses. The Compact is designed to address these aims by: (i) improving service provider operating efficiency; (ii) increasing water storage capacity; (iii) enhancing water delivery capacity; (iv) upgrading wastewater collection and treatment capacity and quality; and (v) modernizing and expanding primary and secondary network components.

By the end of the Compact, the Project is expected to benefit approximately 1,240,000 people in the city of Lusaka, 73 percent of whom currently have incomes of less than $2 per day. As noted above, the Compact has an economic rate of return of approximately 13.7 percent.

**Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Republic of Zambia**

*Millennium Challenge Compact*

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## Millennium Challenge Compact

### Preamble

This Millennium Challenge Compact (this ''Compact'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''MCC''), and the Republic of Zambia (''Zambia''), acting through its government (the ''Government'') (individually a ''Party'' and collectively, the ''Parties''). Capitalized terms used in this Compact will have the meanings provided in Annex V.

Recognizing that the Parties are committed to the shared goals of promoting economic growth and the elimination of extreme poverty in Zambia and that MCC assistance under this Compact supports Zambia's demonstrated commitment to strengthening good governance, economic freedom and investments in people;

Recalling that the Government consulted with the private sector and civil society of Zambia to determine the priorities for the use of MCC assistance and developed and submitted to MCC a proposal for such assistance to achieve lasting economic growth and poverty reduction; and

Recognizing that MCC wishes to help Zambia implement the program described herein to achieve the goal and objectives described herein (as such program description and objectives may be amended from time to time in accordance with the terms hereof, the ''Program'');

The Parties hereby agree as follows:

### Article 1. Goal and Objectives

*Section 1.1 Compact Goal*

The goal of this Compact is to reduce poverty through economic growth in Zambia (the ''Compact Goal''). MCC's assistance will be provided in a manner that strengthens good governance, economic freedom and investments in the people of Zambia.

*Section 1.2 Project Objective*

The objective of the Project (the ''Project Objective'') is to expand access to, and improve the reliability of, water supply and sanitation, and improve drainage services in select urban and peri-urban areas of the city of Lusaka in order to decrease the incidence of water-borne and water-related diseases, generate time savings for households and businesses and reduce non-revenue water in the water supply network.

### Article 2. Funding and Resources

*Section 2.1 Program Funding*

Upon entry into force of this Compact in accordance with Section 7.3, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed Three Hundred and Thirty Nine Million Four Hundred and Sixty Eight Thousand Seven Hundred and One United States Dollars (US$339,468,701) (''Program Funding'') for use by the Government to implement the Program. The allocation of Program Funding is generally described in Annex II.

*Section 2.2 Compact Implementation Funding*

(a) Upon signing of this Compact, MCC will grant to the Government, under the terms of this Compact and in addition to the Program Funding described in Section 2.1, an amount not to exceed Fifteen Million Two Hundred and Eighty Eight Thousand Nine Hundred and Thirty Nine United States Dollars (US$15,288,939) (''Compact Implementation Funding'') under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''MCA Act''), for use to facilitate implementation of the Compact, including for the following purposes:

(i) Financial management and procurement activities;

(ii) Administrative activities (including start-up costs such as staff salaries) and administrative support expenses such as rent, computers and other information technology or capital equipment;

(iii) Monitoring and evaluation activities;

(iv) Feasibility, design, and other studies; and

(v) Other activities to facilitate Compact implementation as approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II.

(b) Without limiting the generality of Section 2.2(a), the Government agrees that MCC will directly administer and manage a portion of the Compact Implementation Funding in order to develop any detailed designs and resettlement action plans required for the Project, and to facilitate any other uses of the Compact Implementation Funding contemplated in clause (a) above, as may be agreed in writing by the Parties (the ''MCC Contracted CIF Activities''). Notwithstanding anything to the contrary in this Compact or the Program Implementation Agreement, MCC will utilize applicable United States government procurement rules and regulations in any procurements it administers and manages in connection with the MCC CIF Contracted Activities, and will disburse MCC Funding from time to time for the MCC CIF Contracted Activities directly to the relevant provider upon receipt of a valid invoice approved by MCC.

(c) Each Disbursement of Compact Implementation Funding (other than any Disbursement for the MCC CIF Contracted Activities) is subject to satisfaction of the conditions precedent to such disbursement as set forth in Annex IV.

(d) If MCC determines that the full amount of Compact Implementation Funding available under Section 2.2(a) exceeds the amount that reasonably can be utilized for the purposes set forth in Section 2.2(a), MCC, by written notice to the Government, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding available under Section 2.2(a) (such excess, the ''Excess CIF Amount''). In such event, the amount of Compact Implementation Funding granted to the Government under Section 2.2(a) will be reduced by the Excess CIF Amount, and MCC will have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at its option by written notice to the Government, may elect to grant to the Government an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding will be subject to the terms and conditions of this Compact applicable to Program Funding.

*Section 2.3 MCC Funding*

Program Funding and Compact Implementation Funding are

collectively referred to in this Compact as ''MCC Funding,'' and includes any refunds or reimbursements of Program Funding or Compact Implementation Funding paid by the Government in accordance with this Compact.

*Section 2.4 Disbursement*

In accordance with this Compact and the Program Implementation Agreement, MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a ''Disbursement''). Subject to the satisfaction of all applicable conditions precedent, the proceeds of Disbursements will be made available to the Government, at MCC's sole election, by (a) deposit to one or more bank accounts established by the Government and acceptable to MCC (each, a ''Permitted Account'') or (b) direct payment to the relevant provider of goods, works or services for the implementation of the Program. MCC Funding may be expended only for Program expenditures.

*Section 2.5 Interest*

The Government will pay or transfer to MCC, in accordance with the Program Implementation Agreement, any interest or other earnings that accrue on MCC Funding prior to such funding being used for a Program purpose.

*Section 2.6 Government Resources; Budget*

(a) The Government will provide all funds and other resources and will take all actions that are necessary to carry out the Government's responsibilities under this Compact.

(b) The Government will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(c) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program.

*Section 2.7 Limitations on the Use of MCC Funding*

The Government will ensure that MCC Funding is not used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting from time to time on the MCC Web site at *www.mcc.gov* (the ''MCC Web site''), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health or safety hazard, as further described in MCC's environmental and social assessment guidelines and any guidance documents issued in connection with the guidelines posted from time to time on the MCC Web site or otherwise made available to the Government (collectively, the ''MCC Environmental Guidelines''); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

*Section 2.8 Taxes*

(a) Unless the Parties specifically agree otherwise in writing, the Government will ensure that all MCC Funding is free from the payment or imposition of any existing or future taxes, duties, levies, contributions or other similar charges (but not fees or charges for services that are generally applicable in Zambia, reasonable in amount and imposed on a non-discriminatory basis) (''Taxes'') of or in Zambia (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority of or in Zambia). Specifically, and without limiting the generality of the foregoing, MCC Funding will be free from the payment of (i) any tariffs, customs duties, import taxes, export taxes and other similar charges on any goods, works or services introduced into Zambia in connection with the Program; (ii) sales tax, value added tax, excise tax, property transfer tax and other similar charges on any transactions involving goods, works or services in connection with the Program; (iii) taxes and other similar charges on ownership, possession or use of any property in connection with the Program; and (iv) taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Program except (x) natural persons who are citizens or permanent residents of Zambia; and (y) legal persons formed under the laws of Zambia (but excluding MCA–Zambia and any other entity formed for the purpose of implementing the Government's obligations hereunder).

(b) The mechanisms that the Government will use to implement the principal tax exemptions required by Section 2.8(a) are set forth in Annex VI. Such mechanisms may include exemptions from the payment of Taxes that have been granted in accordance with applicable law, refund or reimbursement of Taxes by the Government to MCC, MCA–Zambia or to the taxpayer, or payment by the Government to MCA–Zambia or MCC, for the benefit of the Program, of an agreed amount representing any collectible Taxes on the items described in Section 2.8(a).

(c) If a Tax has been paid contrary to the requirements of Section 2.8(a) or Annex VI, the Government will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in United States Dollars or the currency of Zambia within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or MCA–Zambia) that such Tax has been paid.

(d) No MCC Funding, proceeds thereof or Program Assets may be applied by the Government in satisfaction of its obligations under Section 2.8(c).

**Article 3. Implementation**

*Section 3.1 Program Implementation Agreement*

The Parties will enter into an agreement providing further detail on the implementation arrangements, fiscal accountability and disbursement and use of MCC Funding, among other matters (the ''Program Implementation Agreement''); and the Government will implement the Program in accordance with this Compact, the Program Implementation Agreement, any other Supplemental Agreement and any Implementation Letter.

*Section 3.2 Government Responsibilities*

(a) The Government has principal responsibility for overseeing and managing the implementation of the Program.

(b) The Government hereby designates Millennium Challenge Account-Zambia as the accountable entity to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of the Project and its Activities, allocating resources and managing procurements. Such entity will be referred to herein as ''MCA–Zambia,'' and will have the authority to bind the Government with regard to all Program activities. The designation of MCA–Zambia contemplated by this Section 3.2(b) will not relieve the Government of any obligations or responsibilities hereunder or under any related agreement, for which the Government remains fully responsible. MCC hereby acknowledges and consents to the designation in this Section 3.2(b).

(c) The Government will ensure that any Program Assets or services funded in whole or in part (directly or indirectly) by MCC Funding are used solely in furtherance of this Compact and the Program unless MCC agrees otherwise in writing.

(d) The Government will take all necessary or appropriate steps to achieve the Project Objective during the Compact Term (including, without limiting Section 2.6(a), funding all costs that exceed MCC Funding and are required to carry out the terms hereof and achieve such objectives, unless MCC agrees otherwise in writing).

(e) The Government will fully comply with the Program Guidelines, as applicable, in its implementation of the Program.

(f) The Government grants to MCC a perpetual, irrevocable, royalty-free, worldwide, fully paid, assignable right and license to practice or have practiced on its behalf (including the right to produce, reproduce, publish, repurpose, use, store, modify or make available) any portion or portions of Intellectual Property as MCC sees fit in any medium, now known or hereafter developed, for any purpose whatsoever.

*Section 3.3 Policy Performance*

In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I (if any), the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

*Section 3.4 Accuracy of Information*

The Government assures MCC that, as of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects.

*Section 3.5 Implementation Letters*

From time to time, MCC may provide guidance to the Government in writing on any matters relating to this Compact, MCC Funding or implementation of the Program (each, an ''Implementation Letter''). The Government will use such guidance in implementing the Program. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the Program Implementation Agreement or other related agreements.

*Section 3.6 Procurement and Grants*

(a) The Government will ensure that the procurement of all goods, works and services by the Government or any Provider to implement the Program will be consistent with the ''MCC Program Procurement Guidelines'' posted from time to time on the MCC Web site (the ''MCC Program Procurement Guidelines''). The MCC Program Procurement Guidelines include the following requirements, among others:

(i) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(ii) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(iii) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

(b) The Government will ensure that any grant issued in furtherance of the Program (each, a ''Grant'') is awarded, implemented and managed pursuant to open, fair and competitive procedures administered in a transparent manner acceptable to MCC. In furtherance of this requirement, and prior to the issuance of any Grant, the Government and MCC shall agree upon written procedures to govern the identification of potential Grant recipients, including without limitation appropriate eligibility and selection criteria and award procedures. Such agreed procedures shall be posted on the MCA–Zambia Web site.

*Section 3.7 Records; Accounting; Covered Providers; Access*

(a) Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, accounting books, records, documents and other evidence relating to the Program adequate to show, to MCC's satisfaction, the use of all MCC Funding and the implementation and results of the Program (''Compact Records''). In addition, the Government will furnish or cause to be furnished to MCC, upon its request, originals or copies of such Compact Records.

(b) Accounting. The Government will maintain and will use its best efforts to ensure that all Covered Providers maintain Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those prescribed by the International Accounting Standards Board. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any applicable legal requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a ''Provider'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program Asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''Covered Provider'' is (i) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year or (ii) any United States Provider that

receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General of MCC (''Inspector General''), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities, assets and activities funded in whole or in part by MCC Funding.

*Section 3.8 Audits; Reviews*

(a) Government Audits. Except as the Parties may agree otherwise in writing, the Government will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term. In addition, upon MCC's request, the Government will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General or a United States–based certified public accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''Audit Guidelines'') issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of Other Entities. The Government will ensure that MCC-financed agreements between the Government or any Provider, on the one hand, and (i) a United States nonprofit organization, on the other hand, state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' issued by the United States Office of Management and Budget; (ii) a United States for-profit Covered Provider, on the other hand, state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing; and (iii) a non-US Covered Provider, on the other hand, state that the non-US Covered Provider is subject to audit in accordance with the Audit Guidelines.

(c) Corrective Actions. The Government will use its best efforts to ensure that each Covered Provider (i) takes, where necessary, appropriate and timely corrective actions in response to audits; (ii) considers whether the results of the Covered Provider's audit necessitates adjustment of the Government's records; and (iii) permits independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

**Article 4. Communications**

*Section 4.1 Communications*

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

*To MCC:* Millennium Challenge Corporation, Attention: Vice President, Compact Operations, (with a copy to the Vice President and General Counsel, and the MCC resident country mission in Zambia), 875 Fifteenth Street NW., Washington, DC 20005, United States of America, Facsimile: +1 (202) 521–3700, Telephone: +1 (202) 521–3600, Email: *VPOperations@mcc.gov* (Vice President, Compact Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

*To the Government (with a copy to the MCA–Zambia):* Minister of Finance, Ministry of Finance and National Planning, P.O. Box 50062, Chimanga Road, Lusaka, Republic of Zambia, Facsimile: +260 211 251078, Telephone: +260 211 250481, +260 211 254263

*Section 4.2 Representatives*

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, the Minister of Finance, and MCC will be represented by the individual holding the position of, or acting as, Vice President, Compact Operations (each of the foregoing, a ''Principal Representative''). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an ''Additional Representative'') for all purposes other than signing amendments to this Compact. The Government hereby designates the chairperson of the Board of MCA–Zambia as an Additional Representative. A Party may change its Principal Representative to a new representative that holds a position of equal or higher authority upon written notice to the other Party.

*Section 4.3 Signatures*

Signatures to this Compact and to any amendment to this Compact will be original signatures appearing on the same page or in an exchange of letters or diplomatic notes. With respect to all documents arising out of this Compact (other than the Program Implementation Agreement) and amendments thereto, signatures may, as appropriate, be delivered by facsimile or electronic mail and in counterparts and will be binding on the Party delivering such signature to the same extent as an original signature would be.

**Article 5. Termination; Suspension; Expiration**

*Section 5.1 Termination; Suspension*

(a) Either Party may terminate this Compact without cause in its entirety by giving the other Party thirty (30) days' prior written notice. MCC may also terminate this Compact or MCC Funding without cause in part by giving the Government thirty (30) days' prior written notice.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC, as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Web site) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact

or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) An event or series of events has occurred that makes it probable that the Project Objective will not be achieved during the Compact Term or that the Government will not be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact or the Program violates applicable law or United States Government policy, whether now or hereafter in effect;

(iv) The Government or any other person or entity receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Zambia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of such act or any other provision of law;

(vi) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Zambia for assistance under the MCA Act;

(vii) Zambia is classified as a Tier 3 country in the United States Department of State's annual Trafficking in Persons Report; and

(viii) The Government or another person or entity receiving MCC Funding or using Program Assets is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

*Section 5.2 Consequences of Termination, Suspension or Expiration*

(a) Upon the suspension or termination, in whole or in part, of this Compact or any MCC Funding, or upon the expiration of this Compact, the provisions of Section 4.2 of the Program Implementation Agreement will govern the post-suspension, post-termination or post-expiration treatment of MCC Funding, any related Disbursements and Program Assets. Any portion of this Compact, MCC Funding, the Program Implementation Agreement or any other Supplemental Agreement that is not suspended or terminated will remain in full force and effect.

(b) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

*Section 5.3 Refunds; Violation*

(a) If any MCC Funding, any interest or earnings thereon, or any Program Asset is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government will not use MCC Funding, proceeds thereof or Program Assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other existing agreement to the contrary, MCC's right under Section 5.3(a) for a refund will continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

*Section 5.4 Survival*

The Government's responsibilities under this Section and Sections 2.7, 3.2(f), 3.7, 3.8, 5.2, 5.3 and 6.4 will survive the expiration, suspension or termination of this Compact.

**Article 6. Compact Annexes; Amendments; Governing Law**

*Section 6.1 Annexes*

Each annex to this Compact constitutes an integral part hereof, and references to ''Annex'' mean an annex to this Compact unless otherwise expressly stated.

*Section 6.2 Amendments*

(a) The Parties may amend this Compact only by a written agreement signed by the Principal Representatives (or such other government official designated by the relevant Principal Representative).

(b) Notwithstanding Section 6.2(a), the Parties may agree in writing, signed by the Principal Representatives (or such other government official designated by the relevant Principal Representative) or any Additional Representative, to modify any Annex to this Compact in order to, without limitation: (i) Suspend, terminate or modify the Project or any Activity, or to create a new project; (ii) change the allocations of funds as set forth in Annex II as of the date hereof (including to allocate funds to a new project); (iii) modify the Implementation Framework described in Annex I; (iv) add, delete or waive any condition precedent described in Annex IV; or (v) modify the mechanisms for exempting MCC Funding from Taxes as set forth in Annex VI; provided that, in each case, any such modification: (1) Is consistent in all material respects with the Project Objective; (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 (as may be modified by operation of Section 2.2(e)); (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a); (4) does not reduce the Government's responsibilities or contribution of resources required under Section 2.6; and (5) does not extend the Compact Term.

*Section 6.3 Inconsistencies*

In the event of any conflict or inconsistency between:

(a) Any Annex and any of Articles 1 through 7, such Articles 1 through 7, as applicable, will prevail; or

(b) This Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

*Section 6.4 Governing Law*

This Compact is an international agreement and as such will be governed by the principles of international law.

*Section 6.5 Additional Instruments*

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, or existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

*Section 6.6 References to MCC Web site*

Any reference in this Compact, the Program Implementation Agreement or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

*Section 6.7 References to Laws, Regulations, Policies and Guidelines*

Each reference in this Compact, the Program Implementation Agreement or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document will be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended,

revised, replaced, or extended and will include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

*Section 6.8 MCC Status*

MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. MCC and the United States Government assume no liability for any claims or loss arising out of activities or omissions under this Compact. The Government waives any and all claims against MCC or the United States Government or any current or former officer or employee of MCC or the United States Government for all loss, damage, injury, or death arising out of activities or omissions under this Compact, and agrees that it will not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States Government or any current or former officer or employee of MCC or the United States Government will be immune from the jurisdiction of all courts and tribunals of Zambia for any claim or loss arising out of activities or omissions under this Compact.

**Article 7. Entry Into Force**

*Section 7.1 International Agreements*

The Parties understand that each of the Compact and the Program Implementation Agreement, upon its entry into force, will, in the event of any conflict, prevail over the domestic laws of Zambia (other than the Constitution of Zambia).

*Section 7.2 Conditions Precedent to Entry into Force*

Before this Compact enters into force:

(a) The Program Implementation Agreement must have been signed by the parties thereto;

(b) The Government must have delivered to MCC:

(i) A letter signed and dated by the Principal Representative of the Government, or such other representative of the Government as may be duly authorized in a manner acceptable to MCC, confirming that the Government has completed its domestic requirements for this Compact to enter into force and that the other conditions precedent to entry into force in this Section 7.2 have been met;

(ii) A signed legal opinion from the Attorney General of Zambia (or such other legal representative of the Government acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) Complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to the Government's domestic requirements for this Compact to enter into force, which MCC may post on its Web site or otherwise make publicly available;

(c) MCC will not have determined that, after signature of this Compact, the Government has engaged in a pattern of actions inconsistent with the eligibility criteria for MCC Funding;

(d) The Government must have delivered to MCC a plan (the ''GRZ Sanitation Connection Action Plan''), consistent with LWSC's ''Sanitation Marketing Program'' approved by the Government, describing how the Government will administer the supplemental Government funding to be set aside to assist beneficiaries that are unable to pay for household connections to the sanitation infrastructure assets to be financed under this Compact, which plan must be in form and substance satisfactory to MCC;

(e) The Government must have delivered to MCC a certified copy of a resolution of the board of directors of LWSC (or such similar instrument as may be proposed by the Government and is acceptable to MCC) demonstrating, to MCC's satisfaction, that at least fifty percent (50 percent) of LWSC's Retained Earnings will be reserved for asset renewal and capital expansion;

(f) MCC will have determined that the Government has verified a reasonable amount of its outstanding payment obligations to LWSC (as evidenced to MCC's satisfaction) in connection with the provision of water supply and sanitation services, and that such obligations have been satisfied (to MCC's satisfaction); and

(g) The Government and LWSC must have entered into an agreement (the ''LWSC Sustainability Agreement''), in form and substance satisfactory to MCC, setting forth performance requirements or milestones designed to assure the continued technical efficiency and financial and commercial sustainability of LWSC, including, without limitation, requirements or milestones related to LWSC's corporate governance, operational and financial performance and improved customer service, which agreement must also include semi-annual benchmarks against which the Government and LWSC will measure their respective progress in satisfying such performance requirements or milestones and which must also provide for periodic technical audits of the Government's and LWSC's performance under or compliance with such agreement.

*Section 7.3 Date of Entry into Force*

This Compact will enter into force on the date of the letter from MCC to the Government in an exchange of letters confirming that MCC has completed its domestic requirements for entry into force of this Compact and that the conditions precedent to entry into force in Section 7.2 have been met.

*Section 7.4 Compact Term*

This Compact will remain in force for five (5) years after its entry into force, unless terminated earlier under Section 5.1 (the ''Compact Term'').

*Section 7.5 Provisional Application*

Upon signature of this Compact and until this Compact has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact; provided that, no MCC Funding, other than Compact Implementation Funding, will be made available or disbursed before this Compact enters into force.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact.

Done at Lusaka, Zambia, this 10th day of May, 2012, in the English language only.

For the United States of America, acting through the Millennium Challenge Corporation,

Name: Daniel W. Yohannes,
*Title: Chief Executive Officer.*

For the Republic of Zambia,

Name: Alexander B. Chikwanda,
*Title: Minister of Finance.*

**Annex I Program Description**

This Annex I describes the Program that MCC Funding will support in Zambia during the Compact Term.

*A. Program Overview*

1. Background and Consultative Process

The MCC Board of Directors originally selected Zambia as eligible for MCC assistance in December 2008, and has re-selected Zambia as eligible for MCC assistance in each subsequent year. In October 2009, the Government initiated a constraints analysis that identified three main binding constraints to Zambia's economic growth: low quality of human capital; poor infrastructure services; and coordination failures. To elicit feedback on these constraints, the Government undertook a targeted consultative process in accordance with all applicable MCC policies and guidelines, which included over 500 representatives from the government,

private sector and civil society, as well as the donor community. Feedback from these consultations resulted in a list of prioritized sectors deemed to be key to Zambia's economic development, including ecotourism, hydropower, roads, vocational and secondary education and water and sanitation, from which the Government developed and submitted six concept papers for MCC consideration.

After a thorough examination of the economic and operational feasibility of the Government's concept papers, MCC and the Government elected to focus solely on improvements to the water supply, sanitation and drainage sectors in the capital city of Lusaka, a key constraint to economic growth for the country. This examination included further consultations with national and local government representatives, technical specialists, non-governmental organizations and the donor community, including gender-responsive and socially inclusive consultations with community members in each of the 33 wards directly impacted by the Program. As with the initial consultative process, this effort also was conducted in accordance with all applicable MCC policies and guidelines.

The city of Lusaka currently has a population of over 1.8 million people, representing over 10 percent of Zambia's total population, and is projected to have nearly five million residents by 2035. This rapidly increasing population is served by a water supply, sanitation and drainage system that was constructed in the 1960s and 1970s to serve a much smaller population, and which has not benefited from major capital investment or proper maintenance in the intervening years. As a result, the system's core infrastructure assets are outdated, dilapidated and unable to meet current or future demand. Currently, only approximately 70 percent of Lusaka residents have access to treated water supply, and only approximately 65 percent have access to water-borne sanitation (either through a connection to the network or with septic tanks). Those without water-borne sanitation typically rely on pit latrines, most of which are not properly designed and therefore result in groundwater contamination, primarily impacting the shallow wells used for drinking water by the population without access to treated water supply. All of these factors contribute to a high prevalence and incidence of water-borne disease, which is exacerbated by endemic flooding resulting from insufficiently maintained and inadequate drainage infrastructure. In addition to poor health, the degraded and inadequate condition of the system's core infrastructure also forces Lusaka's residents and businesses to waste substantial time and resources resolving water supply shortages and delays, as well as flood losses, resulting in further lost productivity.

The Program is designed to address this constraint to economic growth by supporting infrastructure investments and continued institutional strengthening and reform in order to expand access to, and improve the reliability of, water supply and sanitation, and improve drainage services in select urban and peri-urban areas of the city of Lusaka. To this end, the Program has been developed within the broader framework of, and is consistent with, Zambia's ''National Urban Water Supply and Sanitation Program,'' and, as further described in paragraph 7 of Part B of this Annex I, complements the Government's longstanding and successful efforts to reform the water and sanitation and drainage sectors. These reform efforts have produced a variety of key outcomes, which have laid the foundation for the Program, including, for example, the privatization of state-owned enterprises to create commercial utilities throughout the country, as well as the implementation of cost reflective tariffs, as facilitated through the creation of an autonomous water utility regulator, the National Water Supply and Sanitation Council (''NWASCO'').

2. Project Objective

The Program consists of the Lusaka water supply, sanitation and drainage Project, (the ''LWSSD Project'' or the ''Project''), which in turn consists of the Infrastructure Activity and the Institutional Strengthening Activity, as each is further described in this Annex I.

The Project Objective is to expand access to, and improve the reliability of, water supply and sanitation, and improve drainage services in select urban and peri-urban areas of the city of Lusaka in order to decrease the incidence of water-borne and water-related diseases, generate time savings for households and businesses and reduce non-revenue water in the water supply network.

3. Environmental and Social Safeguards

The Program will be implemented in compliance with the MCC Environmental Guidelines, the International Finance Corporation's Social and Environmental Performance Standards (the ''IFC Performance Standards''), the MCC Gender Policy and the MCC Gender Integration Guidelines and Operational Procedures. Any involuntary resettlement will be carried out in accordance with IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement in a manner acceptable to MCC. The Government will also ensure that the Program complies with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. Specifically, the Government will: (a) Cooperate with or complete, as the case may be, any ongoing environmental and social impact assessments, or, if necessary, undertake and complete any additional environmental and social assessments, environmental and social management plans, health and safety management plans, environmental and social audits and resettlement action plans required under the laws of Zambia, the MCC Environmental Guidelines, the IFC Performance Standards, this Compact, the Program Implementation Agreement, or any other Supplemental Agreement, or as otherwise required by MCC, each in form and substance satisfactory to MCC; (b) ensure that Project-(and, as applicable Activity-) specific environmental and social management plans and health and safety management plans are developed and all relevant measures contained in such plans are integrated into project design, the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (c) implement to MCC's satisfaction appropriate environmental, social, health and safety mitigation measures identified in such assessments or plans or developed to address environmental, social, health and safety issues identified during implementation. Unless MCC agrees otherwise in writing, the Government will fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the MCC Funding specifically allocated for such costs, in the Detailed Financial Plan for the Program.

To maximize the positive social impacts of the Program, address cross-cutting social and gender issues such as human trafficking, child and forced labor and HIV/AIDS, and ensure compliance with the MCC Gender Policy, the Government will: (a) Adhere to the MCC Gender Integration Guidelines and Operational Procedures; (b) develop a comprehensive social and

gender integration plan (''Social and Gender Integration Plan''), in form and substance satisfactory to MCC and reflecting the MCC Social and Gender Integration Plan Guidelines, which, at a minimum, identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable/underrepresented groups, consolidates the findings and recommendations of the Project-(and, as applicable, Activity-) specific social and gender analyses and social and gender-focused sub-activities, and sets forth strategies for incorporating findings of the social and gender analyses into final designs, as appropriate; and (c) ensure, through monitoring and coordination during implementation, that final Project (and Activity) designs, construction tender documents, other bidding documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses and the Social and Gender Integration Plan.

*B. Lusaka Water Supply, Sanitation and Drainage Project*

Set forth below is a description of the LWSSD Project that the Government will implement, or cause to be implemented, using MCC Funding.

1. Summary of Project and Activities

The LWSSD Project is comprised of the following activities (each, an ''Activity''):

- Investments in infrastructure development and rehabilitation, including interventions to rehabilitate the core water supply network, rehabilitate and expand select water supply and sewage networks, reduce Non-Revenue Water (''NRW'') and improve select drainage infrastructure (the ''Infrastructure Activity'').
- The provision of technical assistance to the Lusaka Water and Sewerage Company (''LWSC''), the provincial utility responsible for the management of Lusaka's water and sanitation assets and for the provision of water and sanitation services, and the Lusaka City Council (''LCC''), the Government entity that manages the city's drainage infrastructure and services. This Activity will also include support for comprehensive information, education and communication campaigns, and a competitive grant program designed to spur innovation in the sectors (the ''Institutional Strengthening Activity'').

(a) Infrastructure Activity.

The Infrastructure Activity consists of a series of infrastructure improvements to prioritized water supply, sanitation and drainage assets in Lusaka. Each component of this Activity related to water supply and sanitation was selected based on the results of mutually agreed, comprehensive investment master plans, while the component of this Activity related to drainage was selected based on the results of priorities identified in the ''Study on Comprehensive Urban Development Plan for the City of Lusaka in the Republic of Zambia'' funded by the Japanese International Cooperation Agency (the ''Comprehensive Urban Development Plan''). All components were also selected based on the results of mutually agreed, substantially completed feasibility studies on a subset of priority projects identified in the plans. Collectively, during the Compact Term, the investments under this Activity are expected to increase available water supply from 225 to 240 million liters per day and reduce NRW from 48 percent to an estimated 25 percent. In addition, approximately 150,000 new people are expected to benefit from the water system (either through new household connections or kiosks) and the number of sanitation connections is expected to increase from approximately 22,000 to approximately 38,000.

Specifically, the Infrastructure Activity includes the following sub-activities:

(i) Core Water Network Rehabilitation. This sub-activity is designed to rehabilitate the core water supply network in Lusaka in order to upgrade key treatment and distribution centers and distribution lines and to reduce NRW. Primary infrastructure works to be supported by MCC Funding under this sub-activity are expected to include, without limitation:

(1) The rehabilitation of the Iolanda treatment plant and the Chilanga booster pump station;

(2) The rehabilitation of segments of water transmission mains and the installation of segments of parallel transmission mains;

(3) The rehabilitation of select distribution centers and the construction of up to two new reservoirs;

(4) The supply and installation of bulk and consumer water meters;

(5) The supply of leak repair materials and related tools and equipment, as well as the provision of appropriate training; and

(6) The replacement of unsuitable and inefficient distribution network and connection pipes.

(ii) Chelston Distribution Line Rehabilitation and Expansion. This sub-activity is designed to expand the water supply network serving the Mtendere, Kamanga, Kwamwena and Ndeke-Vorna Valley areas of Lusaka. Primary infrastructure works to be supported by MCC Funding under this sub-activity are expected to include, without limitation:

(1) The installation of new pipes;

(2) The construction of new water kiosks;

(3) The construction of new household connections and water meters; and

(4) The drilling and equipping of boreholes.

(iii) Chelston and Kaunda Square Sewersheds Rehabilitation and Expansion. This sub-activity is designed to expand the sanitation network in the targeted areas. Primary infrastructure works to be supported by MCC Funding under this sub-activity are expected to include, without limitation:

(1) The rehabilitation of the Chelston pump station, including the rehabilitation or replacement of a portion of the related force main;

(2) Upgrading and expanding the Kaunda Square treatment ponds;

(3) Upgrading the Salama pump station;

(4) The construction of new pump stations;

(5) The rehabilitation or replacement of the Kaunda Square sewer interceptor; and

(6) The extension of the Mtendere sewer system in order to expand household sanitation connections.

(iv) Central Distribution Line Rehabilitation and Expansion. This sub-activity is designed to expand the water supply network serving the Ng'ombe, SOS East and Chipata areas of Lusaka. Primary infrastructure works to be supported by MCC Funding under this sub-activity are expected to include, without limitation:

(1) The installation of new pipes;

(2) The construction of new water kiosks; and

(3) The construction of new household connections and water meters.

(v) Bombay Drain Improvements. This sub-activity is designed to reduce flooding through infrastructure improvements to the Bombay drain, which conveys the runoff from the majority of the downtown business district areas of Lusaka. Primary infrastructure works to be supported by MCC Funding under this sub-activity are expected to include, without limitation:

(1) The upsizing of the existing primary outfall and main drain channels;

(2) The stabilization of the newly upsized drainage channels; and

(3) As needed, the installation of protective handrails.

(b) Institutional Strengthening Activity.

The Institutional Strengthening Activity consists of a series of investments designed to increase the ability of LWSC and LCC to maintain and manage their respective infrastructure assets and to more effectively and equitably deliver services to Lusaka residents, as well as to support innovation in water, sanitation and drainage-related activities.

Specifically, the Institutional Strengthening Activity includes the following sub-activities:

(i) Support to LWSC. This sub-activity is focused on strengthening the capacity of LWSC to, without limitation, undertake comprehensive asset management planning and execution, carry out effective environmental management and monitoring, institutionalize and improve gender mainstreaming and conduct effective outreach to ensure pro-poor water sanitation service delivery. MCC Funding for this sub-activity is intended to support:

(1) The provision of technical assistance and related equipment to improve LWSC's maintenance capacity and capability, including, without limitation, the creation of an asset register and improvement of LWSC's electronic data and management systems, and the provision of comprehensive training to improve maintenance budgeting and forecasting, as well as to determine the most effective modality for carrying out LWSC's maintenance responsibilities.

(2) The provision of technical assistance and, potentially, related equipment to strengthen LWSC's capacity to ensure effective environmental monitoring, quality management and compliance.

(3) The provision of technical assistance to better institutionalize and strengthen LWSC's capacity for gender mainstreaming and social inclusion, and to develop and implement policies that will increase LWSC's capacity and incentives to provide affordable services to the peri-urban poor and vulnerable populations.

(4) Support for LWSC-managed information, education and communications (''IEC'') efforts to promote behavior change and care of physical assets, including financial obligations.

(ii) Support to LCC. This sub-activity is focused on strengthening the capacity of LCC to, without limitation, better manage and maintain its drainage assets, to improve environmental management and monitoring, to institutionalize and improve gender mainstreaming and to conduct effective outreach. MCC Funding for this sub-activity is intended to support:

(1) The provision of technical assistance to increase LCC's capacity to plan and maintain Lusaka's overall drainage system, including, without limitation, the development of a comprehensive operations and maintenance program, the completion of an institutional needs assessment and support to implement the recommendations thereof, and support for a detailed ground water study to guide future system-wide operation and maintenance decision-making and coherent, further infrastructure investments.

(2) The provision of technical assistance and, potentially, related equipment to strengthen LCC's capacity to ensure effective environmental monitoring and quality management of drainage infrastructure and to integrate environmental management into its broader governance structure.

(3) The provision of technical assistance to better institutionalize and strengthen LCC's capacity for gender mainstreaming and to better understand and mitigate social and behavioral conditions that may contribute to degraded drainage infrastructure.

(4) Support for LCC-managed IEC efforts to promote behavior change and care of physical assets to ensure the realization of expected Project-related health benefits and the sustainability of the Compact's infrastructure investments.

(iii) Innovation Grant Program for Pro-Poor Service Delivery. This sub-activity will support a competitive grant and partnership program designed to identify, and provide assistance to, innovative partnership opportunities, particularly through private sector engagement. This sub-activity is intended to increase and sustain the poor's access to quality water and sanitation, improve water use, sanitation and hygiene practices among the poor, strengthen tenure security and capacity for community-based planning, provide significant access by women and vulnerable groups to Project benefits and expand opportunities for entrepreneurship and income generating activities related to water, sanitation and drainage. Activities will thus enhance the functioning of the systems, complementing and supplementing the Compact's other investments. Grants issued under this sub-activity will be awarded, implemented and managed pursuant to open, fair and competitive procedures administered in a transparent manner in accordance with all relevant MCC policies and guidelines (including the Program Guidelines, the MCC Gender Integration Guidelines and Operational Procedures and the IFC Performance Standards). Prior to the Disbursement of any MCC Funding for a Grant, MCC and the Government will agree on an operations manual including procedures to govern the identification of potential Grant recipients, including, without limitation, appropriate eligibility and selection criteria and award procedures. The Parties will also agree on the possibility of appointing an outside grant program manager. Unless otherwise approved by MCC, Grants awarded under this component will not be used to support infrastructure investments.

2. Beneficiaries

The LWSSD Project is expected to benefit approximately 1,240,000 individuals over twenty years, which represents the projected total population in Lusaka expected to benefit from at least one of the Activities. Of these beneficiaries, approximately 73 percent are expected to be poor, which is defined as living on less than US$2.00 per day on a purchasing power parity basis. The main channels through which these beneficiaries are expected to benefit from the LWSSD Project are through time savings, improved health outcomes and a reduction in NRW.

3. Environmental and Social Mitigation Measures

The Infrastructure Activity under the LWSSD Project has been classified as a Category ''B'' project in accordance with the MCC Environmental Guidelines and the IFC Performance Standards. This categorization is based on a number of risks and impacts, most of which are site-specific, relatively minor and can be readily mitigated through site-specific environmental and social management plans. Specifically, environmental and social impacts assessments completed for the Infrastructure Activity have confirmed that the majority of the anticipated environmental and social impacts are positive in nature. However, these assessments also identified the following potential environmental- and social-related challenges and impacts that must be managed carefully through effective project design, implementation and monitoring:

- Involuntary Resettlement. The Infrastructure Activity is anticipated to result in the physical and/or economic displacement of approximately 1,800 households due to Project-related land

use and acquisition, although most of these households will only experience minor or temporary resettlement or displacement. A resettlement policy framework has already been developed for the Project and site-specific resettlement action plans will be developed once project designs are complete.

• Community and Worker Health and Safety. In addition to the typical occupational health and safety risks for construction workers, the major risks involve ensuring the safety of residents in the areas where construction activities will require the excavation of trenches, which may involve the use of explosives, in densely populated areas. Mitigation of these risks will be addressed through health and safety management plans, which will include requirements for intense safety training and supervision and extensive ongoing coordination with local community organizations.

• Sludge Removal and Disposal. The upgrade and expansion of the sewerage network and the rehabilitation and expansion of the sewage stabilization ponds will generate additional sewage sludge. LWSC's ability to adequately monitor and manage, and properly dispose of, this additional sewage sludge will be strengthened through the environmental management sub-activity of the Institutional Strengthening Activity.

• Water Quality and Effluent Monitoring. In order to ensure the well-being and environmental health of Lusaka residents it is critical that drinking water and effluent from the sewage ponds regularly meet national standards. LWSC's, and, as appropriate, LCC's, ability to adequately monitor and manage water and effluent quality will be strengthened through the environmental management sub-activity of the Institutional Strengthening Activity.

• Waste collection and Management. One of the principal issues affecting effective drain operation is the blockage of culverts by accumulated solid waste. In order to mitigate the risk associated with underperforming drainage infrastructure due to inadequate solid waste management, the Institutional Strengthening Activity includes support to enhance LCC's drainage-related solid waste and environmental management capabilities.

The Institutional Strengthening Activity has been classified as a Category ''D'' project, as it will involve, among other components, an innovation Grant sub-activity through which MCC Funding will be used to provide assistance to selected Grant recipients for projects that may result in adverse environmental and social impacts. However, unless otherwise approved by MCC, Grants awarded under this component will not be used to support infrastructure-based investments, and as such, are not expected to result in any significant environmental, health or safety hazards. Nonetheless, prior to disbursing any Grants under the innovation Grant sub-activity, MCA–Zambia will be required to develop and implement an environmental management system that is consistent with the MCC Environmental Guidelines and the IFC Performance Standards, as well as any applicable Government regulatory requirements.

4. Donor Coordination

MCC and the Government have actively communicated and coordinated with other donors throughout the development of the Compact, and these efforts will continue during implementation. The World Bank is one of the main donors currently working in Lusaka's water sector. In fact, the Government's ''Water Sector Performance Improvement Project,'' which has been implemented with assistance from the World Bank, has laid much of the sector reform groundwork that has led to improved performance by LWSC.

In addition to the World Bank's sector reform efforts, and as noted elsewhere, each component of the Infrastructure Activity related to water supply and sanitation was selected based on the results of mutually agreed, comprehensive investment master plans financed by MCC during development of this Compact, while the component of the Activity related to drainage was selected based on the results of priorities identified in the Comprehensive Urban Development Plan. MCC and the Government have used these investment master plans to stimulate interest in the water supply and sanitation sector among the donor community, including by hosting a donor forum. While firm commitments have not yet been made for additional investments outlined in the investment master plans, the Government has been in dialogue with donors such as the European Investment Bank, the African Development Bank and the Japanese International Cooperation Agency with regard to further investments in Lusaka's water supply and sanitation sector.

5. USAID

MCC has been in a continuing dialogue with the United States Agency for International Development (''USAID'') throughout the development of this Compact. Specifically, MCC and USAID have discussed potential, complementary investments by USAID through its ''Sustainable Water and Sanitation in Africa Program,'' which may include focused capacity-building for NWASCO that would support the Compact objectives.

6. Sustainability

The long-term sustainability of the water and sanitation infrastructure improvements funded under the Infrastructure Activity is expected to be reinforced by several factors and elements of the Project's design. First, LWSC currently recovers 102 percent of its operating costs, and the new water connections anticipated under the Infrastructure Activity are expected to increase the financial health of the utility. In addition, the Government, with support from the World Bank, has implemented the ''Water Sector Performance Improvement Project,'' which has positively contributed to the financial performance of LWSC. Related to this, the Government and LWSC have agreed to enter into the LWSC Sustainability Agreement as a condition precedent to the entry into force of this Compact, which will set forth certain operational and financial performance milestones for LWSC and the sector. The continued effectiveness of, and compliance with, the LWSC Sustainability Agreement, including satisfaction of the applicable performance milestones, is a condition precedent to the Disbursement of MCC Funding under the Program Implementation Agreement. Also, the technical assistance provided under the Institutional Strengthening Activity is designed to help LWSC better plan for maintenance and asset renewal. Finally, as a condition to entry into force of this Compact and as a condition to subsequent Disbursements of MCC Funding, LWSC will be required to devote a minimum of 50 percent of its annual retained earnings to asset renewal.

The long-term sustainability of the drainage infrastructure improvements funded under the Infrastructure Activity is expected to be reinforced by several factors and elements of the Project's design. First, the Program includes a condition precedent requiring LCC to allocate a minimum of US$1.5 million on an annual basis to be used exclusively for repair and maintenance of drains, as further described in the Program Implementation Agreement. Similarly, technical assistance provided to LCC under the Institutional Strengthening Activity is designed to

improve its ability to manage and maintain its assets.

In addition, sustainability will be addressed across the entire Program through the IEC activities under the Institutional Strengthening Activity. These include the IEC focus on maintenance and care of community-level infrastructure and payment for services, and the focus on health and hygiene-related knowledge and behavior, both of which are critical to ensuring the sustainability of the Program's infrastructure investments and benefits over time.

7. Policy, Legal and Regulatory Reforms

The Government has been pursuing a reform agenda of privatization and deregulation of state-owned enterprises since the advent of a new democratic government in 1991. Following this trend, the Government developed its first comprehensive National Water Policy in 1994. The policy was followed by the enactment of the Water Supply and Sanitation Act in 1997, which led to the creation of NWASCO. To harmonize various water sector issues, the Government updated its National Water Policy in 2010, and also enacted the Water Resources Management Act in 2011. Key outcomes of these developments have been the creation of commercial utilities throughout the country, including LWSC, a move towards full cost recovery tariffs, better water resource management and more independent regulation of the water supply and sanitation utilities.

By embracing a reform agenda, the Government has invested political capital to build a strong foundation for the water sector in order to expand and serve the needs of its population. As a result of the Government's policy reform efforts and the creation of appropriate regulatory and institutional foundations, LWSC and other commercial utilities are starting to perform better, and the sector is being more effectively regulated. Where LWSC and other commercial utilities need assistance now is in the area of new capital to expand their networks and rehabilitate old infrastructure.

Given the significant policy reform already undertaken by the Government in this area, including through continued, sustained support from other donors, such as the World Bank, no major specific sector policy reforms are included under the Compact. However, MCC will monitor the Government's and LWSC's compliance with the reform requirements, performance milestones and related best practices required under the LWSC Sustainability Agreement, which must be entered into by the Government and LWSC as a condition precedent to the entry into force of this Compact.

In addition, in light of concerns about the ability of poor households to afford the household sanitation connections constructed under the Compact, the Government is required to deliver the GRZ Sanitation Connection Action Plan as a condition precedent to the entry into force of this Compact, and satisfactory implementation of the GRZ Sanitation Connection Action Plan, including the commitment of appropriate funding by the Government, is a condition precedent to subsequent Disbursements of MCC Funding, as further described in the Program Implementation Agreement. The GRZ Sanitation Connection Action Plan must include, without limitation, a methodology for determining who qualifies for such assistance and a plan for administering such assistance and ensuring that such beneficiaries obtain household connections.

*C. Implementation Framework*

1. Overview

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation and fiscal accountability for the use of MCC Funding are summarized below. MCC and the Government will enter into the Program Implementation Agreement and any other agreements in furtherance of this Compact, all of which, together with this Compact, set out certain rights, responsibilities, duties and other terms relating to the implementation of the Program.

2. MCC

MCC will take all appropriate actions to carry out its responsibilities in connection with this Compact and the Program Implementation Agreement, including the exercise of its approval rights in connection with the implementation of the Program.

3. Accountable Entity

The Government has established MCA–Zambia as a company limited by guarantee under the laws of Zambia. In accordance with Section 3.2(b) of this Compact, MCA–Zambia will act on the Government's behalf to implement the Program and to exercise and perform the Government's rights and responsibilities with respect to the oversight, management and implementation of the Program, including, without limitation, managing the implementation of the Project and its Activities, allocating resources and managing procurements. The Government will ensure that MCA–Zambia takes all appropriate actions to implement the Program, including the exercise and performance of the rights and responsibilities designated to it by the Government pursuant to this Compact and the Program Implementation Agreement. Without limiting the foregoing, the Government will also ensure that MCA–Zambia has full decision-making autonomy, including, without limitation, the ability, without consultation with, or the consent or approval of, any other party, to: (i) Enter into contracts, grants, cooperative agreements or any other agreement in its own name; (ii) sue and be sued; (iii) establish an account in a financial institution in the name of MCA–Zambia and hold MCC Funding in that account; (iv) expend MCC Funding; (v) engage a fiscal agent who will act on behalf of MCA–Zambia on terms acceptable to MCC; (vi) engage one or more procurement agents who will act on behalf of MCA–Zambia, on terms acceptable to MCC, to manage the acquisition of the goods, works and services required by MCA–Zambia to implement the activities funded by this Compact; and (vii) competitively engage one or more auditors to conduct audits of its accounts. The Government will take all the necessary actions to manage and operate MCA–Zambia in accordance with the applicable conditions precedent to the Disbursement of Compact Implementation Funding set forth in Annex IV to this Compact.

In accordance with the laws of Zambia, the Minister of Finance and the Secretary to the Treasury, Ministry of Finance and National Planning, will serve as the members of MCA–Zambia, but will not have any control over, or oversight of, the administration or management of MCA–Zambia in their capacity as members of MCA–Zambia. Rather, MCA–Zambia will be administered and managed by a board of directors (the ''Board'') and a management unit (the ''Management Unit''). In addition, MCA–Zambia will be supported by one or more stakeholders committees (each, a ''Stakeholders Committee'') to continue the consultative process during implementation of the Program.

The governance of MCA–Zambia is set forth in more detail in the MCA–Zambia Articles of Association (the ''Bylaws''), the Program Implementation Agreement and the Governance Guidelines, which, collectively, set forth the responsibilities of the Board, the Management Unit and the Stakeholders Committee(s).

(a) Board.

(i) Composition. The Board is initially comprised of the following nine members, including six representatives from Government entities and three representatives from civil society and private sector organizations: (1) The Secretary to the Treasury, Ministry of Finance and National Planning; (2) the Permanent Secretary, Ministry of Finance and National Planning; (3) the Permanent Secretary, Ministry of Local Government and Housing; (4) the Chair of LWSC's Board of Directors; (5) the Town Clerk, LCC; (6) the Chair of the Board of Directors for the Zambia Environmental Management Agency; (7) the Executive Director, Non-Governmental Organization Coordinating Committee; (8) the Executive Director, Civil Society for Poverty Reduction; and (9) a representative from the private sector. The Chief Executive Officer (''CEO'') of MCA–Zambia and an MCC representative will serve as observers.

(ii) Roles and Responsibilities. The Board will be responsible for overseeing the implementation of the Program and will have final decision-making authority over the implementation of the Program. The Board will hold regular meetings, at a minimum once per quarter. The specific roles of the members and observers are set forth in the Bylaws and the Governance Guidelines.

(b) Management Unit.

(i) Composition. The Management Unit will initially include the following key officers: (1) The CEO; (2) the Deputy CEO Operations; (3) the Deputy CEO Administration; (4) the Finance and Administration Director; (5) the Procurement Director; (6) the Infrastructure Development Director; (7) the Environment and Social Performance Director; (8) the Social and Gender Assessment Director; (9) the Monitoring and Evaluation and Economics Director; (10) the Communications and Outreach Director; (11) the Information Technology Director; (12) the Legal Director; (13) the Internal Auditor; and (14) Grants Director. These key officers will be supported by appropriate additional staff to enable the Management Unit to execute its roles and responsibilities, in accordance with any applicable staffing plan approved by MCC.

(ii) Roles and Responsibilities. The Management Unit will be based in Lusaka, Zambia, and will be responsible for managing the day-to-day implementation of the Program, with oversight from the Board. The Management Unit will serve as the principal link between MCC and the Government, and will be accountable for the successful execution of the Project and each Activity. MCA–Zambia will be subject to Government audit requirements. As a recipient of MCC Funding, MCA–Zambia will also be subject to MCC audit requirements.

(c) Stakeholders' Committee(s).

(i) Composition. The Stakeholders Committee (or, if appropriate and approved by MCC, committees) will provide input to the Board and the Management Unit on matters that relate to the Program, promoting transparency and ongoing consultation. The size, composition and manner of selection of members of the Stakeholders Committee(s) are subject to ongoing discussions between the Government and MCC, and will be dictated by the project areas of the Program. Membership will at least reflect the non-governmental organizations, private sector, civil society and local and regional governments that were consulted by the Government in developing its proposal for the Compact.

(ii) Roles and Responsibilities. Consistent with the Governance Guidelines, the Stakeholders Committee(s) will be responsible for continuing the consultative process throughout implementation of the Program. While the Stakeholders Committee(s) will not have any binding decision-making authority, it will be responsible for, among other things, reviewing, at the request of the Board or the Management Unit, certain reports, agreements and documents related to the implementation of the Program in order to provide advice and input to MCA–Zambia regarding the implementation of the Program.

4. Implementing Entities

Subject to the terms and conditions of this Compact, the Program Implementation Agreement and any other related agreement entered into in connection with this Compact, MCC and the Government may identify certain entities or institutions to receive technical assistance or other support under this Compact, or to assist MCA-Zambia with the implementation of the Project or any Activity (or any component thereof) in furtherance of this Compact (each, an ''Implementing Entity''). The identification of any Implementing Entity will be subject to review and approval by MCC. As of the date of this Compact, the Government and MCC have identified LWSC and LCC as Implementing Entities with respect to the Project. The Government will ensure that the roles and responsibilities of each Implementing Entity and other appropriate terms are set forth in an agreement, in form and substance satisfactory to MCC (each an ''Implementing Entity Agreement'').

5. Fiscal Agent

Unless MCC agrees otherwise in writing, the Government, through MCA-Zambia, will appoint a fiscal agent (the ''Fiscal Agent''), which will be responsible for assisting the Government with its fiscal management and assuring appropriate fiscal accountability of MCC Funding. The roles and responsibilities of the Fiscal Agent will be set forth in the Program Implementation Agreement and such agreement as MCA-Zambia enters into with the Fiscal Agent, which agreement will be in form and substance satisfactory to MCC.

6. Procurement Agent

Unless MCC agrees otherwise in writing, the Government, through MCA-Zambia, will appoint a procurement agent (the ''Procurement Agent'') to carry out and certify specified procurement activities in furtherance of this Compact. The roles and responsibilities of the Procurement Agent will be set forth in the Program Implementation Agreement and such agreement as MCA-Zambia enters into with the Procurement Agent, which agreement will be in form and substance satisfactory to MCC. The Procurement Agent will adhere to the procurement standards set forth in the MCC Program Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by the Government pursuant to the Program Implementation Agreement, unless MCC agrees otherwise in writing.

**Annex II Multi-Year Financial Plan Summary**

This Annex II summarizes the Multi-Year Financial Plan for the Program.

A multi-year financial plan summary (''Multi-Year Financial Plan Summary'') is attached hereto as Exhibit A to this Annex II. By such time as specified in the Program Implementation Agreement, the Government will adopt, subject to MCC approval, a multi-year financial plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, the annual and quarterly funding requirements for the Program (including administrative costs) and for the Project, projected both on a commitment and cash requirement basis.

EXHIBIT A—MULTI-YEAR FINANCIAL PLAN SUMMARY

| Component | (US$) | | | | | | |
|---|---|---|---|---|---|---|---|
| | CIF[1] | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total |
| 1. Lusaka Water Supply, Sanitation, and Drainage Project | | | | | | | |
| (A) Infrastructure Activity | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| (B) Institutional Strengthening Activity | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Subtotal | 10,561,039 | 21,307,520 | 67,592,363 | 84,753,880 | 80,808,204 | 45,524,334 | 310,547,340 |
| 2. Monitoring and Evaluation (M&E) | | | | | | | |
| Monitoring and Evaluation | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Subtotal | 58,000 | 1,627,000 | 1,852,000 | 2,052,000 | 177,000 | 75,000 | 5,841,000 |
| 3. Program Administration and Audit | | | | | | | |
| (A) Program Management and Oversight | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| (B) Fiscal Agent/Procurement Agent | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| (C) Audits | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Subtotal | 4,669,900 | 7,436,000 | 6,651,000 | 6,518,200 | 6,506,700 | 6,587,500 | 38,369,300 |
| Grand Total | 15,288,939 | 30,370,520 | 76,095,363 | 93,324,080 | 87,491,904 | 52,186,834 | 354,757,640 |

[1] Pursuant to Section 2.2(b) of the Compact, MCC will directly administer and manage a portion of the Compact Implementation Funding.

**Annex III Description of Monitoring and Evaluation Plan**

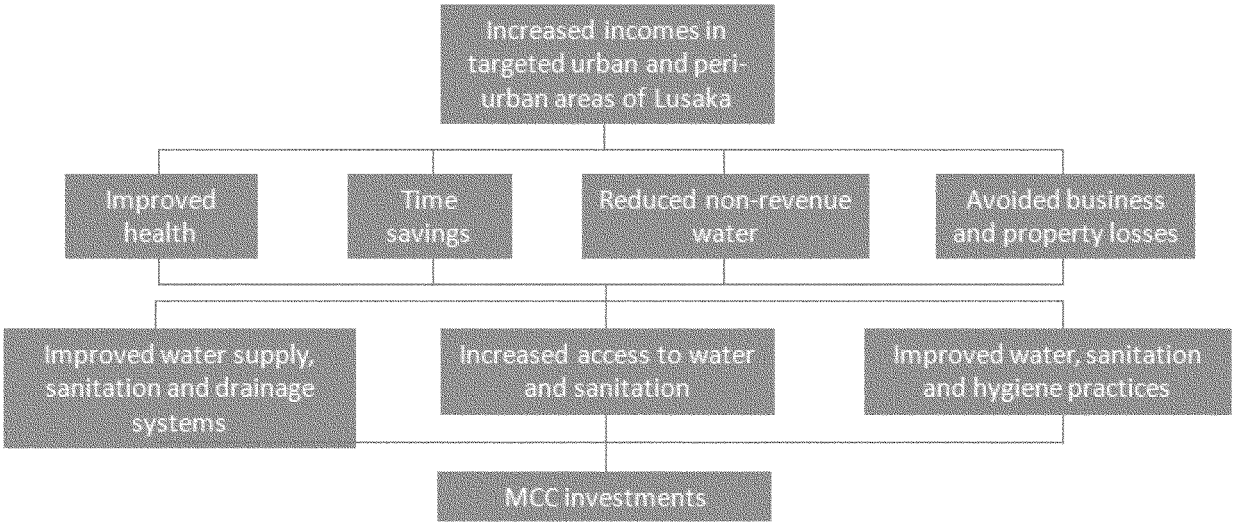
This Annex III generally describes the components of the monitoring and evaluation plan (''M&E Plan'') for the Program. The actual content and form of the M&E Plan will be agreed to by MCC and the Government in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs posted from time to time on the MCC Web site (the ''MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs''). The M&E Plan may be modified from time to time with MCC approval without requiring an amendment to this Annex III.

*1. Overview*

MCC and the Government will formulate and agree to, and the Government will implement or cause to be implemented, an M&E Plan that specifies (a) how progress toward the Compact Goal and the Project Objective will be monitored, (''Monitoring Component''), (b) a process and timeline for the monitoring of planned, ongoing, or completed Activities to determine their efficiency and effectiveness, and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (''Evaluation Component''). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCA–Zambia and elsewhere.

*2. Program Logic*

The M&E Plan will be built on the logic model below, which illustrates how the Program, the Project and the Activities contribute to the Compact Goal and the Project Objective.




*3. Monitoring Component*

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) the Indicators (as defined below), (b) the definitions of the Indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, and (f) the timeline for reporting on each Indicator to MCC.

Further, the Monitoring Component will track changes in the selected Indicators for measuring progress towards the achievement of the objectives during the Compact Term. The M&E Plan will establish baselines

that measure the situation prior to a development intervention, against which progress can be assessed or comparisons made (each a, ''Baseline''). The Government will collect Baselines on the selected Indicators or verify already collected Baselines where applicable and as set forth in the M&E Plan.

(a) Indicators. The M&E Plan will measure the results of the Program using quantitative, objective and reliable data (''Indicators''). Each Indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (''Target''). All Indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, the Government may add Indicators or refine the definitions and Targets of existing Indicators.

(i) Compact Indicators.

(1) Goal. The M&E Plan will contain the following Indicator related to the Compact Goal. Although the Project will contribute to this goal, the results are attributable to many factors in the economy:

(A) Increased incomes of households in Project areas.

(2) Other Indicators. The M&E Plan will contain the Indicators listed in the following tables.

| Result | Indicator | Definition | Baseline value | End of compact |
|---|---|---|---|---|
| **Cross-Cutting Outcomes** | | | | |
| Improved household health | Incidence of water-borne diseases. | Number of cases of infectious diarrhea and cholera per 1,000 population. | 138 per 1,000 | 32 per 1,000 |
| Decreased economic impact of water-related diseases. | Days of work missed due to illness. | Average Number of days of work missed per beneficiary, per year (disaggregated by sex). | TBD | 18% reduction |
| | Days of school missed due to illness. | Average Number of days of school missed per school age beneficiary, per year (disaggregated by sex). | TBD | 20% reduction |
| **Water Supply Infrastructure Rehabilitation and Expansion** | | | | |
| Improved water service coverage. | Access to improved water supply. | Number of new household connections to the water network made possible through the Compact. | 0 | 16,790 |
| Improved quality of service delivery. | Continuity of service | Average hours of service per day for water supply | 17 | 24 |
| | Volume of water produced | Total volume of water produced in cubic meters per day for the service area. | 225,000 | 240,000 |
| Reduced water losses | Non-revenue water | The difference between water supplied and water sold (i.e. volume of water ''lost'') expressed as a percentage of water supplied.. | 48% | 25% |
| Time savings for households | Time spent fetching water | Average time spent by household members to fetch water in the past week (hours) (disaggregated by sex). | 16 | 9.5 |
| Improved water supply infrastructure. | Length of the water distribution network (km). | Total length of the distribution network in km | 1,372 | 1,547 |
| | Water points constructed | The number of non-networked, stand-alone water supply systems constructed (kiosks). | 532 | 596 |
| **Sanitation Infrastructure Rehabilitation and Expansion** | | | | |
| Improved sanitation coverage | Access to improved sanitation | Number of new household connections to sewage network made possible through the Compact. | 0 | 13,147 |
| Improved sanitation infrastructure. | Length of the sewer system | Total length of the sewerage network in km | 408 | 490 |
| **Drainage Infrastructure Rehabilitation** | | | | |
| Improved drainage system | Length of the drainage system | Total km of drainage channel rehabilitation funded by the Compact. | 0 | 30 |

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for Disbursements for the relevant Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with existing MCC systems, other service providers, and ministries.

(e) Role of MCA-Zambia. The monitoring and evaluation of this Compact spans one Project and will involve governmental, nongovernmental, and private sector institutions. In accordance with the designation contemplated by Section 3.2(b) of this Compact, MCA-Zambia is responsible for implementation of the M&E Plan. MCA-Zambia will oversee all Compact-related monitoring and evaluation activities conducted for the Project, ensuring that data from all implementing entities is consistent, accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

*4. Evaluation Component*

The Evaluation Component of the M&E Plan will contain three types of evaluations: (i) impact evaluations; (ii) project performance evaluations; and (iii) special studies. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Possible evaluations include:

- Infrastructure Activity. An evaluation of this activity would focus on household level impacts including health outcomes and expenditures; time savings; property values; and the availability and reliability of water, sanitation, and drainage services. Although a specific methodology has not been identified, due to the high potential for learning from these investments, MCC and MCA-Zambia will work together to develop as rigorous an evaluation of the infrastructure investments as possible.
- Institutional Strengthening Activity. The Institutional Strengthening Activities would likely undergo performance evaluations aimed at assessing their effectiveness and contribution to the overall sustainability of the infrastructure investments.
- Innovation Grant Program. The innovation grant (IG) program under the Institutional Strengthening Activity will seek opportunities to rigorously evaluate the activities that are proposed for funding. To the extent the IG program supports innovative ideas in the realm of water, sanitation, and drainage services, rigorous evaluations would serve an accountability function and, if possible, a learning function.

(a) Impact Evaluation. The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into Project design. Final impact evaluation strategies are to be included in the M&E Plan.

(b) Final Evaluation. The M&E Plan will make provision for final Project-level evaluations (''Final Evaluations''). With the prior written approval of MCC, the Government will engage independent evaluators to conduct the Final Evaluations at the end of the Project. The Final Evaluations will review progress during Compact implementation and provide a qualitative context for interpreting monitoring data and impact evaluation findings. They must at a minimum (i) evaluate the efficiency and effectiveness of the Activities; (ii) determine if and analyze the reasons why the Compact Goal and the Project Objective, outcome(s) and output(s) were or were not achieved; (iii) identify positive and negative unintended results of the Program; (iv) provide lessons learned that may be applied to similar projects; and (v) assess the likelihood that results will be sustained over time.

(i) Special Studies. The M&E Plan will include a description of the methods to be used for special studies, as necessary, funded through this Compact or by MCC. Plans for conducting the special studies will be determined jointly between the Government and MCC before the approval of the M&E Plan. The M&E Plan will identify and make provision for any other special studies, ad hoc evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or the Government may request special studies or ad hoc evaluations of the Project, the Activities, or the Program as a whole prior to the expiration of the Compact Term. When the Government engages an evaluator, the engagement will be subject to the prior written approval of MCC. Contract terms must ensure non-biased results and the publication of results.

(c) Request for Ad Hoc Evaluation or Special Study. If the Government requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to the Project or any Activity or to seek funding from other donors, no MCC Funding resources may be applied to such evaluation or special study without MCC's prior written approval.

*5. Other Components of the M&E Plan*

In addition to the monitoring and evaluation components, the M&E Plan will include the following components for the Program, the Project and the Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan; and

(b) Assumptions and Risks. Any assumption or risk external to the Program that underlies the accomplishment of the Project Objective and Activity outcomes and outputs. However, such assumptions and risks will not excuse any Party's performance unless otherwise expressly agreed to in writing by the other Party.

*6. Approval and Implementation of the M&E Plan*

The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with the Program Implementation Agreement, any other relevant Supplemental Agreement and the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

**Annex IV Conditions Precedent to Disbursement of Compact Implementation Funding**

This Annex IV sets forth the conditions precedent applicable to Disbursements of Compact Implementation Funding other than Disbursements for MCC CIF Contracted Activities (each a ''CIF Disbursement''). Capitalized terms used in this Annex IV and not defined in this Compact will have the respective meanings assigned thereto in the Program Implementation Agreement. Upon execution of the Program Implementation Agreement, each CIF Disbursement will be subject to the terms of the Program Implementation Agreement.

*1. Conditions Precedent to Initial CIF Disbursement*

Each of the following must have occurred or been satisfied prior to the initial CIF Disbursement:

(a) The Government (or MCA-Zambia) has delivered to MCC:

(i) an interim fiscal accountability plan acceptable to MCC; and

(ii) a CIF procurement plan acceptable to MCC.

*2. Conditions Precedent to all CIF Disbursements (Including Initial CIF Disbursement)*

Each of the following must have occurred or been satisfied prior to each CIF Disbursement:

(a) The Government (or MCA-Zambia) has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) A completed Disbursement Request, together with the applicable Periodic Reports, for the applicable Disbursement Period, all in accordance with the Reporting Guidelines;

(ii) A certificate of MCA-Zambia, dated as of the date of the Disbursement Request, in such form as provided by MCC;

(iii) If a Fiscal Agent has been engaged, a Fiscal Agent Disbursement Certificate; and

(iv) If a Procurement Agent has been engaged, a Procurement Agent Disbursement Certificate.

(b) If any proceeds of the CIF Disbursement are to be deposited in a

bank account, MCC has received satisfactory evidence that (i) the Bank Agreement has been executed, and (ii) the Permitted Accounts have been established.

(c) Appointment of an entity or individual to provide fiscal agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of a Fiscal Agent Agreement, duly executed and in full force and effect, and the Fiscal Agent engaged thereby is mobilized.

(d) Appointment of an entity or individual to provide procurement agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of the Procurement Agent Agreement, duly executed and in full force and effect, and the Procurement Agent engaged thereby is mobilized.

(e) MCC is satisfied, in its sole discretion, that (i) the activities being funded with such CIF Disbursement are necessary, advisable or otherwise consistent with the goal of facilitating the implementation of the Compact and will not violate any applicable law or regulation; (ii) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Zambia or any Government entity has occurred and is continuing under this Compact or any other Supplemental Agreement; (iii) there has been no violation of, and the use of requested funds for the purposes requested will not violate, the limitations on use or treatment of MCC Funding set forth in Section 2.7 of this Compact or in any applicable law or regulation; (iv) any Taxes paid with MCC Funding through the date 90 days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with Section 2.8(c) of this Compact; and (v) the Government has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under this Compact and any other Supplemental Agreement.

(f) For any CIF Disbursement occurring concurrently with or after the Initial Disbursement of Program Funding in accordance with Section 3.3 and 3.4 of the Program Implementation Agreement: MCC is satisfied, in its sole discretion, that (i) MCC has received copies of any reports due from any technical consultants (including environmental auditors engaged by MCA-Zambia) for any Activity since the previous Disbursement Request, and all such reports are in form and substance satisfactory to MCC; (ii) the Implementation Plan Documents and Fiscal Accountability Plan are current and updated and are in form and substance satisfactory to MCC, and there has been progress satisfactory to MCC on the components of the Implementation Plan for any relevant Projects or Activities related to such CIF Disbursement; (iii) there has been progress satisfactory to MCC on the M&E Plan and Social and Gender Integration Plan for the Program or relevant Project or Activity and substantial compliance with the requirements of the M&E Plan and Social and Gender Integration Plan (including the targets set forth therein and any applicable reporting requirements set forth therein for the relevant Disbursement Period); (iv) there has been no material negative finding in any financial audit report delivered in accordance with this Compact and the Audit Plan, for the prior two quarters (or such other period as the Audit Plan may require); (v) MCC does not have grounds for concluding that any matter certified to it in the related MCA Disbursement Certificate, the Fiscal Agent Disbursement Certificate or the Procurement Agent Disbursement Certificate is not as certified; and (vi) if any of the officers or key staff of MCA-Zambia have been removed or resigned and the position remains vacant, MCA-Zambia is actively engaged in recruiting a replacement.

(g) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Compact or MCC Funding in accordance with Section 5.1 of this Compact.

**Annex V Definitions**

*Activity* has the meaning provided in paragraph 1 of Part B of Annex I.

*Additional Representative* has the meaning provided in Section 4.2.

*Applicable Acts* has the meaning provided in Annex VI.

*Audit Guidelines* has the meaning provided in Section 3.8(a).

*Baseline* has the meaning provided in paragraph 3 of Annex III.

*Board* has the meaning provided in paragraph 3 of Part C of Annex I.

*Bylaws* has the meaning provided in paragraph 3 of Part C of Annex I.

*CEO* has the meaning provided in paragraph 3(a)(i) of Part C of Annex I.

*CIF Disbursement* has the meaning provided in Annex IV.

*Compact* has the meaning provided in the Preamble.

*Compact Contract* has the meaning provided in Annex VI.

*Compact Goal* has the meaning provided in Section 1.1.

*Compact Implementation Funding* has the meaning provided in Section 2.2(a).

*Compact Records* has the meaning provided in Section 3.7(a).

*Compact Term* has the meaning provided in Section 7.4.

*Comprehensive Urban Development Plan* has the meaning provided in paragraph 1(a) of Part B of Annex I.

*Covered Provider* has the meaning provided in Section 3.7(c).

*Disbursement* has the meaning provided in Section 2.4.

*Eligible Entities* has the meaning provided in Annex VI.

*Eligible Individuals* has the meaning provided in to Annex VI.

*Evaluation Component* has the meaning provided in paragraph 1 of Annex III.

*Excess CIF Amount* has the meaning provided in Section 2.2(d).

*Final Evaluations* has the meaning provided in paragraph 4(b) of Annex III.

*Fiscal Agent* has the meaning provided in paragraph 5 of Part C of Annex I.

*Governance Guidelines* means MCC's Guidelines for Accountable Entities and Implementation Structures, as such may be posted on MCC's Web site from time to time.

*Government* has the meaning provided in the Preamble.

*Grant* has the meaning provided in Section 3.6(b).

*GRZ Sanitation Connection Action Plan* has the meaning provided in Section 7.2(d).

*IEC* has the meaning provided in paragraph 1(b)(i)(4) of Part B of Annex I.

*IFC Performance Standards* has the meaning provided in paragraph 3 of Part A of Annex I.

*Implementation Letter* has the meaning provided in Section 3.5.

*Implementing Entity* has the meaning provided in paragraph 4 of Part C of Annex I.

*Implementing Entity Agreement* has the meaning provided in paragraph 4 of Part C of Annex I.

*Indicators* has the meaning provided in paragraph 3(a) of Annex III.

*Infrastructure Activity* has the meaning provided in paragraph 1 of Part B of Annex I.

*Inspector General* has the meaning provided in Section 3.7(d).

*Institutional Strengthening Activity* has the meaning provided in paragraph 1 of Part B of Annex I.

*Intellectual Property* means all registered and unregistered trademarks, service marks, logos, names, trade

names and all other trademark rights; all registered and unregistered copyrights; all patents, inventions, shop rights, know how, trade secrets, designs, drawings, art work, plans, prints, manuals, computer files, computer software, hard copy files, catalogues, specifications, and other proprietary technology and similar information; and all registrations for, and applications for registration of, any of the foregoing, that are financed, in whole or in part, using MCC Funding.

*LPO* has the meaning provided in Schedule D to Annex VI.

*LCC* has the meaning provided in paragraph 1 of Part B of Annex I.

*LWSC* has the meaning provided in paragraph 1 of Part B of Annex I.

*LWSC's Retained Earnings* means, as calculated at the end of any fiscal year, the Retained Earnings at the beginning of such fiscal year plus the portion of net income retained after payment of any dividends.

*LWSC Sustainability Agreement* has the meaning provided in Section 7.2(g).

*LWSSD Project* has the meaning provided in paragraph 2 of Part A of Annex I.

*M&E Plan* has the meaning provided in Annex III.

*Management Unit* has the meaning provided in paragraph 3 of Part C of Annex I.

*MCA Act* has the meaning provided in Section 2.2(a).

*MCA-Zambia* has the meaning provided in Section 3.2(b).

*MCC* has the meaning provided in the Preamble.

*MCC Contracted CIF Activities* has the meaning provided in Section 2.2(b).

*MCC Environmental Guidelines* has the meaning provided in Section 2.7(c).

*MCC Funding* has the meaning provided in Section 2.3.

*MCC Gender Policy* means the MCC Gender Policy (including any guidance documents issued in connection with the guidelines) posted from time to time on the MCC Web site or otherwise made available to the Government.

*MCC Gender Integration Guidelines and Operational Procedures* means MCC's Gender Integration Guidelines and Operational Procedures, as such may be posted on MCC's Web site from time to time.

*MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs* has the meaning provided in Annex III.

*MCC Program Procurement Guidelines* has the meaning provided in Section 3.6(a).

*MCC Social and Gender Integration Plan Guidelines* means MCC's Social and Gender Integration Plan Guidelines, as such may be posted on MCC's Web site, or otherwise provided by MCC, from time to time.

*MCC Web site* has the meaning provided in Section 2.7.

*Monitoring Component* has the meaning provided in paragraph 1 of Annex III.

*Multi-Year Financial Plan Summary* has the meaning provided in paragraph 1 of Annex II.

*NWASCO* has the meaning provided in paragraph 1 of Part A of Annex I.

*NRW* has the meaning provided in paragraph 1 of Part B of Annex I.

*Party* and *Parties* have the meaning provided in the Preamble.

*Permitted Account* has the meaning provided in Section 2.4.

*Principal Representative* has the meaning provided in Section 4.2.

*Procurement Agent* has the meaning provided in paragraph 6 of Part C of Annex I.

*Program* has the meaning provided in the Preamble.

*Program Assets* means any assets, goods or property (real, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

*Program Funding* has the meaning provided in Section 2.1.

*Program Guidelines* means collectively the Audit Guidelines, the MCC Environmental Guidelines, the MCC Gender Policy, the Governance Guidelines, the MCC Program Procurement Guidelines, the Reporting Guidelines, the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs, the MCC Cost Principles for Government Affiliates Involved in Compact Implementation (including any successor to any of the foregoing) and any other guidelines, policies or guidance papers relating to the administration of MCC-funded compact programs, and, in each case, as from time to time published on the MCC Web site.

*Program Implementation Agreement* has the meaning provided in Section 3.1.

*Project* means the LWSSD Project.

*Project Objective* has the meaning provided in Section 1.2.

*Provider* has the meaning provided in Section 3.7(c).

*Reporting Guidelines* means the MCC ''Guidance on Quarterly MCA Disbursement Request and Reporting Package'' posted by MCC on the MCC Web site or otherwise publicly made available.

*Retained Earnings* means the portion of net income retained after payment of any dividends.

*Social and Gender Integration Plan* has the meaning provided in paragraph 3 of Part A of Annex I.

*Stakeholders Committee* has the meaning provided in paragraph 3 of Part C of Annex I.

*Supplemental Agreement* means any agreement between (a) the Government (or any Government affiliate, including MCA-Zambia) and MCC (including, but not limited to, the Program Implementation Agreement) or (b) MCC and/or the Government (or any Government affiliate, including MCA-Zambia), on the one hand, and any third party, on the other hand, including any of the Providers, in each case, setting forth the details of any funding, implementing or other arrangements in furtherance of this Compact.

*Statutory Instrument* has the meaning provided in Annex VI.

*Target* has the meaning provided in paragraph 3(a) of Annex III.

*Taxes* has the meaning provided in Section 2.8(a).

*Third Schedule* has the meaning provided in Schedule E to Annex VI.

*United States Dollars* or *US$* means the lawful currency of the United States of America.

*USAID* has the meaning provided in paragraph 5 of Part B of Annex I.

*VAT* has the meaning provided in Schedule D to Annex VI.

*Vendor* has the meaning provided in Annex VI.

*Zambia* has the meaning provided in the Preamble.

*ZRA* has the meaning provided in Schedule D to Annex VI.

**Annex VI Tax Schedules**

*1. Introduction*

In accordance with, and without limiting the generality of, Section 2.8 of the Compact, the Government will ensure that all MCC Funding is free from the payment or imposition of any existing or future Taxes in or of Zambia. This will include any interest or earnings on MCC Funding, and any MCC Funding disbursed, directly or indirectly, to or for: (i) MCA-Zambia; (ii) any goods, works, services, technology and other assets and activities under the Program or the Project; (iii) any persons and entities, including without limitation any Implementing Entity, contractor (prime and subcontractors), consultant or grantees, that provide such goods, works, services, technology and assets, or perform such activities (each, a ''Vendor''); and/or (iv) any income, profits, and payments with respect to the foregoing, except as otherwise allowed pursuant to Section 2.8 of the Compact.

This Annex VI sets out the mechanisms for exempting MCC Funding from the principal Taxes otherwise imposed by the Government. Should any potential liability for Taxes on MCC Funding arise that is not contemplated by the mechanisms set out in this Annex VI, the Parties will, in accordance with Section 2.8 of the Compact, agree to the means by which MCC Funding will be exempt from such Taxes.

For the purposes of this Annex VI, MCA-Zambia and any Vendor are referred to variously as ''Eligible Entities'' or ''Eligible Individuals,'' as appropriate.

In addition, for the purposes of this Annex VI, any Compact-related contracts, agreements or grants with an Eligible Entity or Eligible Individual are referred to as a ''Compact Contract.''

*2. General Background*

For most Tax exemptions or Tax rebates, the applicable tax-related laws of Zambia (the ''Applicable Acts'') have vested powers in the Minister of Finance and National Planning to grant such exemptions or rebates through the issuance of subsidiary legislation, each referred to as a ''Statutory Instrument.'' For every Statutory Instrument that is issued in respect of a tax exemption or rebate, the Minister of Finance and National Planning submits an explanatory memorandum to the Committee on Delegated Legislation of Parliament. The memorandum explains why the Statutory Instrument has been issued.

In general, MCC Funding will be treated in accordance with the provisions of donor-funded projects, under which there is authority to exempt any goods, services or works that are purchased using such funds from taxation in Zambia. In terms of income tax and other exemptions, for which existing exemption mechanisms are not specifically referenced in the Applicable Acts, the Minister of Finance and National Planning will issue a specific Statutory Instrument.

*3. Miscellaneous Additional Requirements*

For the purposes of determining if a natural person is a permanent resident of Zambia or if a legal person has been formed under the laws of Zambia under Section 2.8(a) of the Compact, the taxable status of such natural or legal person will be based on its status at the time it is awarded or executes a Compact-related agreement, contract, or grant, and such initial determination will not change regardless of: (i) The type of agreement, contract or grant used to employ or engage such natural or legal person; (ii) any laws of Zambia that purport to change such status based on period of contract or grant performance, or period of time residing and/or working in Zambia; and/or (iii) any requirement under the laws of Zambia that a company or other legal person must establish a branch office in Zambia, or otherwise register or organize itself under the laws of Zambia, in order to provide goods, works or services in Zambia.

In addition, in complying with the tax exemption obligations set forth in the Compact, the Government will also exempt MCA-Zambia, the Fiscal Agent, the Procurement Agent and/or any other Vendor from any obligation imposed by the laws of Zambia, including the Applicable Acts, to withhold any Taxes from any payments made to any Eligible Entities or Eligible Individuals.

*4. General Mechanism Exemption*

The general mechanism that the Government will use to implement its tax exemption obligations under the Compact is as follows:

(a) The Minister of Finance and National Planning and MCA-Zambia will cooperate in drafting an explanatory memorandum to the Committee on Delegated Legislation of Parliament explaining the policy behind the issuance of the Statutory Instrument to exempt MCC Funding from the payment or imposition of any Taxes, and specifically the requirement to exempt Eligible Entities and/or Eligible Individuals from the following types of Taxes with respect to MCC Funding:

(i) Corporate Income Tax;

(ii) Personal Income Tax;

(iii) Withholding Tax;

(iv) Excise Tax on Fuel; and

(v) Any other taxes that require a Statutory Instrument for exemption.

(b) The explanatory memorandum will, at a minimum, specify:

(i) The project or activity that will benefit from the exemption;

(ii) The expected timeframe of each project or activity;

(iii) The expected cost of each project or activity; and

(iv) A complete list of Taxes that will be exempted.

(c) For tax exemptions not provided for by means of a Statutory Instrument, the exemption will be provided by the means set out in this Annex VI, or as otherwise agreed by the Parties.

**Schedule A Corporate Income Tax**

*1. Procedures*

(a) The Minister of Finance and National Planning will issue a Statutory Instrument to exempt Eligible Entities receiving MCC Funding from payment of corporate income tax on any income derived from that MCC Funding, in accordance with the Income Tax Act.

(b) Any Eligible Entity earning income derived from MCC Funding in Zambia in any given tax year will be exempt from the payment or imposition of any Zambian income (and other) taxes on such income, and as such will not be required to have any taxes withheld on any income derived from MCC Funding during the tax year.

(c) At the end of a given tax year, any Eligible Entity earning only income derived from MCC Funding in Zambia in that tax year will file a tax return indicating that such income is not subject to taxation in Zambia in accordance with the Compact, the Statutory Instrument issued by the Minister of Finance and National Planning and the Compact Contract. The Eligible Entity will include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

(d) Any Eligible Entity earning both income derived from MCC Funding and non-Compact-related income in Zambia in any given tax year will:

(i) Maintain its books and records to segregate financial activity related to its Compact-funded activities from those financial activities that are not related to the Compact.

(ii) At the end of any such tax year, file its tax return on income that is not derived from MCC Funding, as applicable, providing the documentation required in paragraph 3 above.

**Schedule B Personal Income Tax**

*1. Procedures*

(a) The Minister of Finance and National Planning will issue a Statutory Instrument to exempt Eligible Individuals receiving MCC Funding from payment of personal income tax on any income earned from that MCC Funding, in accordance with the Income Tax Act.

(b) MCA-Zambia will send a letter to the Minister of Finance and National Planning listing any exempt natural persons (as determined by Section 2.8(a) of the Compact and this Annex VI) working on Compact-related projects or activities, and will attach a copy of the agreement or contract under which the exempt natural person will be working. The letter should also include a request to exempt such natural person from any social security and other related benefits required under the laws of Zambia.

(c) Any Eligible Individual earning only income derived from MCC Funding

in Zambia in any given tax year will be exempt from the payment or imposition of any Zambia taxes on such income, and as such will not be required to have taxes withheld on any such income earned during the tax year. At the end of the tax year, such Eligible Individual will file a tax return indicating that such income is not subject to taxation in Zambia, in accordance with the Compact, the Statutory Instrument issued by the Minister of Finance and National Planning and the Compact Contract. The Eligible Individual will include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

(d) Any Eligible Individual earning both income derived from MCC Funding and non-Compact-related income in Zambia in any given tax year will be permitted to exclude the gross amount of personal income derived from MCC Funding for the purposes of filing his/her year-end individual income taxes in Zambia for any such tax year. Such Eligible Individual will include a copy of the applicable Compact Contract and the Statutory Instrument with its tax return.

**Schedule C Withholding Tax**

*1. Description*

The withholding tax is a flat, general tax at the rate of 15 percent withheld at the source of payment in connection with such things as interest, dividends, royalties, rents, management and consultancy fees, commissions and public entertainment fees.

*2. Procedure*

The Minister of Finance and National Planning will issue a Statutory Instrument to exempt Eligible Entities and Eligible Individuals receiving MCC Funding from the requirement to have withholding tax withheld at the source of payment for management and consultancy fees, as well as other payments that would otherwise be subject to the withholding tax that are paid with MCC Funding. For the avoidance of doubt, the Statutory Instrument will also exempt MCA-Zambia from the requirement to withhold and remit such tax.

**Schedule D Value Added Tax**

*1. Description*

The value added tax (''VAT'') is a consumption-based tax that is levied in the supply chain at each point where value is added to a good or service. VAT is incurred by the final person or entity in the chain of supply that is not registered for VAT. Persons registered for VAT will claim back, through their respective tax return, the input VAT incurred in the course of their business, and remit to the Zambia Revenue Authority (''ZRA'') the output VAT collected in excess of their input VAT paid. Therefore, registered suppliers do not pay VAT.

*2. Procedure*

(a) For the purposes of VAT, the tax exemption required under the Compact will be provided via the zero rating of goods or services supplied or imported under a technical aid program or project which is:

(i) Paid for through donor funding, such as MCC Funding through the Compact; and

(ii) Provided by the donor, or by a contractor of the donor, under a written agreement with the Government.

(b) Each applicable Compact Contract will explicitly state that goods, works or services purchased using MCC Funding under the Compact are zero rated for the purposes of VAT. The zero rating will then be implemented through the issuance of Local Purchase Orders (each an ''LPO'').

(c) MCA-Zambia will provide the following information, on MCA-Zambia official letterhead, for each Compact Contract to the Permanent Secretary (Budget and Economic Affairs), Ministry of Finance and National Planning, P.O. Box 50062, Lusaka, Zambia:

(i) Name of Eligible Entity or Eligible Individual;

(ii) Name of the Project/Activity undertaken through Compact Contract;

(iii) Total contract value;

(iv) Location(s) where the goods, works or services will be provided; and

(v) Name and address of the senior official of the Eligible Entity or Eligible Individual who will be responsible and accountable for the issuance of the LPO.

(d) The Ministry of Finance and National Planning will direct ZRA to issue an LPO booklet to the Eligible Entity or Eligible Individual in the amount of the total value of the Compact Contract.

(e) The Eligible Entity or Eligible Individual will pay for Compact-funded purchases less VAT, complete the LPO certificate in the amount of the VAT for that particular purchase, and provide the LPO certificate to the vendor as proof for VAT zero-rating of the purchase.

**Schedule E Excise Duty on Fuel**

*1. Description*

The excise duty is a tax on particular goods or products, whether imported or produced domestically, imposed at any stage of production or distribution. Excise duties are determined by reference to weight, strength or quantity of the goods or products, or by reference to their value. The excise duty is charged on the ''Excisable Value'' (i.e., the customs value plus customs duty). Fuel is generally subject to an excise duty under the laws of Zambia, including the Applicable Acts.

*2. Procedure*

Fuel that will be purchased for official use under the Compact using MCC Funding will be exempt from the payment or imposition of any Taxes, including excise duties.

Subject to the procedures below, ZRA will advise MCA-Zambia, and each Eligible Entity and Eligible Individual, of the designated fuel suppliers/filling stations where fuel is deemed to be supplied in bond (i.e., from bonded premises or filling stations).

MCA-Zambia will be listed in the Third Schedule of the ''Customs and Excise (General) Regulations, 2000'' (the ''Third Schedule'') as exempt from customs and excise taxes. Accordingly, MCA-Zambia will be entitled to purchase fuel free from taxation at the designated fuel suppliers/filling stations when such fuel is purchased using MCC Funding.

With regard to Eligible Entities and Eligible Individuals, a letter of rebate confirmation will be issued by the Ministry of Finance and National Planning to ZRA. To facilitate issuance of this letter, MCA-Zambia will send a letter to the Ministry of Finance and National Planning confirming those entities or individuals eligible for the exemption, providing a copy of the applicable Compact Contract.

Upon issuance of the letter of rebate confirmation by the Ministry of Finance and National Planning, the Eligible Entity and/or Eligible Individual will be entitled to purchase fuel free from taxation at the designated fuel suppliers/filling stations when such fuel is purchased using MCC Funding.

**Schedule F Customs Duty and Tariff Taxes**

*1. Description*

Customs duty is charged on the ''Customs Value'' of imported capital equipment and raw materials (0 to 5 percent), intermediate goods (15 percent), and finished goods (25 percent).

*2. Procedure*

(a) Goods imported by MCA-Zambia.

The Minister of Finance and National Planning will issue a Statutory Instrument to list MCA-Zambia in the

Third Schedule. The listing of MCA-Zambia in the Third Schedule will enable MCA-Zambia to qualify for an exemption from the payment of customs duty and tariffs on all goods that will be imported for the official use of MCA-Zambia for Compact-related purposes.

Accordingly, all imports for official use by MCA-Zambia will be cleared free of customs duties and tariffs by ZRA on the basis of MCA-Zambia being listed as exempt on the Third Schedule.

(b) Goods imported by Eligible Entities and Eligible Individuals.

With regard to goods imported by Eligible Entities and Eligible Individuals, a letter of rebate confirmation will be issued by the Ministry of Finance and National Planning to ZRA. To facilitate issuance of this letter, MCA-Zambia will send a letter to the Ministry of Finance and National Planning confirming those entities or individuals eligible for the exemption, providing a copy of the applicable Compact Contract, including the approved bills of quantities.

Upon issuance of the letter of rebate confirmation by the Ministry of Finance and National Planning, the Eligible Entity and/or Eligible Individual will be cleared free of customs duties and tariffs by ZRA to the extent of the Compact Contract, including the approved bill of quantities.

(c) Goods imported by staff to take up employment.

The ''Customs and Excise (General) Regulations, 2000'' provides for an exemption from the payment of custom duties and tariffs on household and personal effects, including one motor vehicle per household, for new residents in Zambia. The individual requiring the exemption will need to inform ZRA on arrival in Zambia that they are new residents and show proof (normally passport and any other documentation that may be required). The Applicable Acts provide that such persons must import these items within six months of arrival to benefit from this rebate.

(d) Machinery and Equipment imported by Eligible Entities and Eligible Individuals for use on Compact-related projects or activities.

The ''Customs and Excise (General) Regulations, 2000'' provide for an exemption from payment of custom duties and tariffs on machinery and equipment imported for any Compact-related projects or activities when such machinery and equipment will remain on the project or activity, or will be the property of either MCA-Zambia or the Government at the end of the Program.

Regarding machinery or equipment imported for use in connection with any Compact-related projects or activities, the Applicable Acts separately provide for the temporary importation of machinery or equipment by Eligible Entities and Eligible Individuals using machinery or equipment that they already own, but which is located outside Zambia. Such machinery or equipment may be imported exempt from the payment of custom duties or tariffs.

Subject to the conditions indicated above, the procedure for the exemption of custom duties or tariffs on machinery and equipment imported by Eligible Entities or Eligible Individuals for use on Compact-related activities or projects will be as follows:

- Importation of equipment on short term projects (i.e., twelve months or less). In such cases, machinery or equipment can be imported into the country through a Temporal Import Permit. The applicable Eligible Entity or Eligible Individual will apply to ZRA by providing proof (normally a copy of the Compact Contract, together with confirmation from MCA-Zambia and any other documentation that may be required) that such entity or individual will be carrying out Compact-related projects or activities, and that such machinery or equipment is being imported for twelve months or less for the purposes of implementing such Compact-related projects or activities.
- Importation of equipment on long term projects (i.e., more than twelve months). In such cases, MCA-Zambia will send a letter to the Ministry of Finance and National Planning to request a temporal exemption from the payment of custom duties and tariffs on such machinery and equipment, and will provide a copy of the applicable Compact Contract, including the bill of quantities.

In any case, the provisions of the ''Customs and Excise (General) Regulations, 2000'' will apply to the disposal of all machinery and equipment imported by an Eligible Entity or an Eligible Individual in connection with its Compact-related projects and activities when such machinery and equipment will no longer be used to carry out Compact-related projects or activities.

**Schedule G Import VAT**

*1. Description*

Import VAT is collected on behalf of the VAT Division and is applied to imported goods that attract VAT. VAT is charged on the ''Taxable Value'' (i.e., the customs value plus customs duty, plus excise duty, where applicable) at the rate of 16 percent.

For equipment imported from outside Zambia on a temporary basis (i.e., for the duration of the Compact) the Eligible Entity or Eligible Individual must remove the equipment from Zambia within a reasonable period of time after the end of the Compact (or the applicable period of performance) or pay any residual taxes that had been exempted (see related provisions in Schedule F above).

*2. Procedure MCA-Zambia and Any Eligible Entities or Eligible Individuals*

(a) MCA-Zambia will send letter to Ministry of Finance and National Planning requesting exemption from import VAT, either for itself or on behalf of the Eligible Entity or the Eligible Individual. This letter must include:

(i) Copy of the Compact Contract; and

(ii) Copy of the bill of quantities for goods to be imported by MCA-Zambia, or the Eligible Entity or Eligible Individual (as the case may be).

(b) Ministry of Finance and National Planning will direct ZRA to issue an exemption certificate to MCA-Zambia, or the Eligible Entity or the Eligible Individual (as the case may be).

(c) MCA-Zambia, or the Eligible Entity or Eligible Individual (as the case may be), will present the following to the Bureau of Customs:

(i) Bill of lading;

(ii) Invoice for goods; and

(iii) Certificate of exemption issued by ZRA.

(d) The Credibility and Controls Unit of the Bureau of Customs is responsible for clearance of the imported items. The Credibility and Controls Unit will issue instructions to the Port Authority to allow the import VAT exemption and release the goods.

(e) Estimated time for this clearance is three (3) to four (4) days.

**Schedule H Medical Levy Tax**

*1. Description*

The medical levy was introduced through the ''Medical Levy Act, 2003'' in an effort to raise additional revenue for the health sector. Banks and other financial institutions are required to deduct the Medical Levy from gross interest earned by any person and partnership on any savings or deposit accounts, treasury bills or government bonds. The Medical Levy (1 percent) is charged on all interest earnings from banks and other financial institutions.

*2. Procedure*

The Minister of Finance and National Planning will issue a Statutory

Instrument to exempt MCA-Zambia from payment of the medical levy.

[FR Doc. 2012–11993 Filed 5–16–12; 8:45 am]

BILLING CODE 9211–03–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Advisory Committee on the Presidential Library-Foundation Partnerships

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Presidential Library-Foundation Partnerships. The meeting will be held to discuss the National Archives and Records Administration's budget and its strategic planning process as it relates to Presidential Libraries. The meeting will be open to the public.

**DATES:** The meeting will be held on Friday, June 1, 2012 from 9:00 a.m. to 12:00 noon.

**ADDRESSES:** National Archives building at 700 Pennsylvania Avenue NW., Washington, DC, Room 105.

**FOR FURTHER INFORMATION CONTACT:** Denise LeBeck at 301–837–3250 or *denise.lebeck@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Meeting attendees may enter from the Pennsylvania Avenue entrance. Due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the contact email listed. Photo identification will be required. No visitor parking is available at the Archives building; however there are commercial parking lots and metered curb parking nearby.

Dated: May 14, 2012.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 2012–11978 Filed 5–16–12; 8:45 am]

BILLING CODE 7515–01–P

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meeting; Corporate Administration Committee, Board of Directors

**TIME AND DATE:** 2:00 p.m., Thursday, May 24, 2012.

**PLACE:** 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

**AGENDA:**

I. Call to Order
II. Executive Session
III. Employee Performance Management System Consult
IV. Policy Changes
V. Human Resources Updates
VI. Washington, DC Office Lease Update
VII. Annual Report Board Memberships—Officers and Board Appointees
VIII. Board Elections and Appointments
IX. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2012–12046 Filed 5–15–12; 11:15 am]

BILLING CODE 7570–02–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0110]**

### An Approach for Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment four (4) draft regulatory guides (DGs), DG–1285, ''An Approach for Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' (proposed Revision 3 of Regulatory Guide [RG] 1.174); DG–1286, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Inservice Testing,'' (proposed Revision 1 of RG 1.175); DG 1287, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications'' (proposed Revision 2 of RG 1.177); and DG–1288, ''An Approach for Plant-Specific Risk-Informed Decisionmaking for Inservice Inspection of Piping'' (proposed Revision 2 of RG 1.178). These guides describe methods the NRC staff considers acceptable for plant-specific, risk-informed decisionmaking on specific licensee activities.

**DATES:** Submit comments by June 29, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0110. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0110. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional directions on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Robert Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7483 or email: *Robert.Carpenter@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2012–0110 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0110.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search,

select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DGs and their corresponding regulatory analysis are available electronically under the following ADAMS Accession Numbers: DG–1285 (ML12012A006 and ML12013A089), DG–1286 (ML12017A053 and ML12017A052), DG–1287 (ML12017A054 and ML12017A059), and DG1288 (ML12017A076 and ML12017A077).

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0110 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publically disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

**II. Further Information**

The NRC is issuing for public comment 4 draft regulatory guides in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

These 4 draft regulatory guides are temporarily identified by their task numbers, DG–1285, DG–1286, DG–1287, and DG–1288. The focus of the revisions to these RGs addresses the Commission's Staff Requirements Memorandum (SRM) (SECY–11–0014, issued 3–15–2011), titled ''Use of Containment Accident Pressure in Analyzing Emergency Core Cooling System and Containment Heat Removal System Pump Performance in Postulated Accidents'' directing the staff to revise the discussion on defense-in-depth. Specifically, the SRM stated,

> Because the statements in Regulatory Guide 1.174 are subject to different interpretations, the staff should revise this guide using precise language to assure that the defense-in-depth philosophy is interpreted and implemented consistently. To the extent that other regulatory guidance refers to defense in depth, the relevant documents should be updated also, as appropriate.

In reviewing these RGs, it was observed that clarification could be added in several other places; for example:

• The use of the terms ''PRA technical acceptability,'' ''PRA technical adequacy,'' and ''PRA quality'' were not clear.

• References in the RGs, in places, have been either updated or are no longer in use.

Although the focus of this proposed revision is to revise the discussion on defense-in-depth, the NRC staff believes that the identified clarifications should be addressed. In DG–1285 (proposed Rev. 3 of RG 1.174) the terms on PRA technical acceptability, PRA technical adequacy, and PRA quality are revised to be consistent with RG 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities'' and the references were updated. It is the intent of the staff, following the public review and comment period, to review all four RGs and identify administrative changes that will improve the consistency, quality, and usability of each guide. Stakeholders and the public are requested to provide any input regarding areas in these DGs where clarification and improvements may be needed.

*DG–1285,* is proposed revision 3 of Regulatory Guide 1.174 dated May 2011, it provides guidance on an approach the NRC finds acceptable for analyzing issues associated with proposed changes to a plant's licensing basis and for assessing the impact of these changes on the risk associated with plant design and operation. One key element to this type of decisionmaking is an engineering analysis of the proposed change. As part of the engineering analysis, licensees evaluate the impact of the change on maintaining adequate defense-in-depth. This proposed revision incorporates additional language and specific examples of how maintaining defense-in-depth is achieved when licensees use risk-informed analysis of proposed changes to the plant's licensing basis.

*DG–1286,* is proposed revision 1 of Regulatory Guide 1.175 dated August 1998, it provides an approach to using risk-informed decisionmaking in developing inservice testing programs for nuclear power plants. This revision updates the defense-in-depth evaluation to be consistent with the proposed changes to Regulatory Position 2.1.1 in draft Regulatory Guide DG–1285, (above) which provides guidance on evaluating proposed changes to a plant's licensing basis, including changes to the inservice testing program.

*DG–1287,* is proposed revision 2 of Regulatory Guide 1.177 dated May 2011, it describes a method acceptable to the NRC for using probabilistic risk analysis to evaluate proposed changes to a plant's technical specifications. As in evaluating changes to a plant's licensing basis, a key element in evaluating changes to technical specifications is an engineering analysis of the proposed change. As part of the engineering analysis, licensees evaluate the impact of the change on maintaining adequate defense-in-depth. This revision updates the defense-in-depth evaluation to be consistent with the proposed changes to Regulatory Position 2.1.1 in draft Regulatory Guide DG–1285, (above) which provides guidance on evaluating proposed changes to the plant's technical specifications.

*DG–1288,* is proposed revision 2 of Regulatory Guide 1.178 dated September 2003, it provides an approach to using risk-informed decisionmaking in developing inservice inspection programs for piping in nuclear power plants. This revision updates the defense-in-depth evaluation to be consistent with the proposed changes to Regulatory Position 2.1.1 in draft Regulatory Guide DG–1285, which provides guidance on evaluating proposed changes to a plant's licensing basis, including changes to the inservice inspection program for piping systems.

Dated at Rockville, Maryland, this 4th day of May 2012.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2012–11958 Filed 5–16–12; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2012–18 and CP2012–24; Order No. 1341]**

## Product List Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add First-Class Package Service Contract 2 the competitive product list. This notice addresses procedural steps associated with this filing.

**DATES:** *Supplemental Information is due (from Postal Service):* May 18, 2012. *Comments are due:* May 22, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

### I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 2 to the Competitive Product List.[1] The Postal Service asserts that First-Class Package Service Contract 2 is ''a competitive product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3).'' *Id.* at 1. The Request has been assigned Docket No. MC2012–18.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.,* Attachment B. The instant contract has been assigned Docket No. CP2012–24.

*Request.* To support its Request, the Postal Service filed the following six attachments:

- Attachment A—a redacted version of the Governors' Decision and accompanying analysis. An explanation and justification is provided in the Governors' Decision and analysis filed in the unredacted version under seal;
- Attachment B—a redacted version of the instant contract;
- Attachment C—the proposed changes in the Mail Classification Schedule with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a)(1), (2), and (3); and
- Attachment F—an application for non-public treatment of the materials filed under seal. The materials filed under seal are the unredacted version of the instant contract and the required cost and revenue data.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the instant contract will cover its attributable costs, make a positive contribution to cover institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's institutional costs. *Id.,* Attachment D at 1. Mr. Nicoski contends that there will be no issue of subsidization of market dominant products by competitive products as a result of the instant contract. *Id.*

*Instant contract.* The Postal Service included a redacted version of the instant contract with the Request. *Id.,* Attachment B. It is scheduled to become effective on the day the Commission issues all necessary regulatory approval (Effective Date). *Id.* at 2. It will expire 1 year from the Effective Date unless, among other things, either party terminates the agreement with 30 days written notice to the other party. *Id.* The Postal Service represents that the related contract is consistent with 39 U.S.C. 3633. *Id.,* Attachment D.

The Postal Service filed much of the supporting materials, including the unredacted version of the instant contract, under seal. *Id.,* Attachment F. It maintains that the unredacted Governors' Decision, the unredacted version of the instant contract, and supporting documents establishing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5 should remain confidential. *Id.* at 1. The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.*

*Supplemental information.* The Commission notes that the Postal Service contemporaneously filed five other First-Class Package Service contracts in separate dockets. The financial workpapers that support each contract use the same volume distribution percentages. Please provide the basis for the volume distribution for each contract. Please file this information by May 18, 2012.

### II. Notice of Filings

The Commission establishes Docket Nos. MC2012–18 and CP2012–24 to consider the Request and the instant contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in these dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than May 22, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2012–18 and CP2012–24 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than May 22, 2012.

4. The supplemental information discussed in the body of this order is due no later than May 18, 2012.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2012–11979 Filed 5–16–12; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 2 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 9, 2012 (Request).

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon written request, copies available from:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Rule 15g–5; OMB Control No. 3235–0394; SEC File No. 270–348.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in the following rule: Rule 15g–5—Disclosure of compensation of associated persons in connection with penny stock transactions (17 CRF 240.15g–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 209 broker-dealers will spend an average of 87 hours annually to comply with the rule. Thus, the total compliance burden is approximately 18,183 burden-hours per year.

Rule 15g–5 contains record retention requirements. Compliance with the rule is mandatory.

The Commission may not conduct or sponsor collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: May 11, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11929 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30063; 812–13846]**

### Van Eck VIP Trust, et al.; Notice of Application

May 10, 2012.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application to amend a prior order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (C) of the Act.

**APPLICANTS:** Van Eck VIP Trust (f/k/a Van Eck Worldwide Insurance Trust) (''VIP''), Van Eck Funds, Market Vectors ETF Trust (each, a ''Trust'' and collectively, the ''Trusts''), and Van Eck Associates Corporation (the ''Adviser'').

**SUMMARY OF THE APPLICATION:** Applicants previously obtained an order (''Prior Order'') permitting certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.[1] Applicants request an order (''Order'') that would amend the Prior Order by also permitting such registered open-end management investment companies to acquire shares of registered closed-end investment companies and business development companies as defined by section 2(a)(48) of the Act (''business development companies,'' and, collectively with registered closed-end investment companies, ''Closed-End Funds'') that are within and outside the same group of investment companies in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(C) of the Act.

**FILING DATES:** The application was filed on November 16, 2010, and amended on May 10, 2011, November 18, 2011, March 15, 2012, and May 7, 2012.

**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 June 4, 2012, 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, 335 Madison Avenue 19th Floor, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551–6819, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**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. Each Trust is registered under the Act as an open-end management investment company. The shares of each series of VIP currently are offered and sold through registered separate accounts of insurance companies that are not affiliates of the Adviser (''Registered Separate Accounts'') and unregistered separate accounts of insurance companies that are not affiliates of the Adviser (''Unregistered Separate Accounts'' and, together with the Registered Separate Accounts, the

[1] In the Matter of Van Eck Worldwide Insurance Trust, et al., Investment Company Act Release Nos. 27820 (May 9, 2007) (notice) and 27849 (June 1, 2007) (order). Van Eck Funds, Inc. was a party to the application for the Prior Order but is not among the applicants for the Application (as defined below) because Van Eck Funds, Inc. was deregistered on June 25, 2008 (under the name Van Eck Funds II, Inc.).

''Separate Accounts'').[2] The Adviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 and is the investment adviser for each of the Funds (as defined below).

2. The Prior Order permits certain series of the Trusts (''Funds'') to operate as funds of funds (''Funds of Funds'') that will invest in other Funds that are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G) of the Act) as the Fund of Funds and also in other registered open-end management investment companies and unit investment trusts that are not part of the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Fund of Funds.[3] Applicants request an Order under section 12(d)(1)(J) that would amend the Prior Order by also permitting the Funds of Funds to invest in excess of the limits imposed by sections 12(d)(1)(A) and 12(d)(1)(C) of the Act in securities issued by Closed-End Funds that may or may not be part of the same group of investment companies[4] as the Fund of Funds.[5]

## Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

3. Applicants state that the terms and conditions of the Prior Order would largely address the concerns underlying section 12(d)(1) with respect to the acquisition by a Fund of Funds of shares of Closed-End Funds, which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. For example, applicants state that, pursuant to condition 8 of the Prior Order, as amended, prior to an investment in shares of a Closed-End Fund in excess of the limit in section 12(d)(l)(A)(i), the Fund of Funds and the Closed-End Fund will execute a Participation Agreement. Applicants also state that an Unaffiliated Fund (including a Closed-End Fund) would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, applicants state that, subject solely to the giving of notice to the Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Fund (including a Closed-End Fund) could terminate a Participation Agreement with the Fund of Funds.

4. Furthermore, applicants believe that a Fund of Fund's investments in Closed-End Funds raise less potential for a fund to exercise undue influence over the management and operation of an Underlying Fund through the threat of large scale redemptions. Applicants state that this concern is not applicable to a Fund of Funds' investments in Closed-End Funds because Closed-End Funds do not issue redeemable securities. Rather, applicants state that sales will only be effected through transactions in the secondary market.[6] Applicants state that, because these sales would not require the Closed-End Fund to alter its investments or deplete its assets, a Fund of Funds should not be able to influence the management or operation of a Closed-End Fund through threats of sales of shares.

5. However, applicants state that there may be a greater opportunity for a Fund of Funds to exercise influence over the management and operations of a Closed-End Fund through voting power than is the case with respect to open-end funds. To address this concern, applicants submit that, with respect to a Fund of Funds' investment in an Unaffiliated Underlying Fund that is a Closed-End Fund, (i) each member of the Group or the Subadviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Closed-End Fund in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or the Subadviser Group will vote its shares of the Closed-End Fund in the same proportion as the vote of all other holders of the same type of such Closed-End Fund's shares (except that any member of the Group or Subadviser Group that is a Separate Account will instead be subject to the voting procedures described in Condition 1 below). Applicants state that this would preclude the Group and Subadviser Group from influencing the management or operation of a Closed-End Fund, including the outcome of a shareholder proposal, through voting by a Fund of Funds of shares.

6. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

## Applicants' Conditions

Applicants agree that the Order granting the requested relief would be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which would be revised as follows:

The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within

[2] Capitalized terms not otherwise defined in this notice have the same meaning ascribed to them in the application for the Order (''Application''). To ensure that the Closed-End Funds are covered by the terms and conditions of the Prior Order, as amended by the Application, applicants have proposed modifying the terms ''Affiliated Underlying Funds,'' ''Unaffiliated Underlying Funds'' and ''Unaffiliated Funds'' to include relevant Closed-End Funds.

[3] Each Fund of Funds will comply with the terms and conditions of the Prior Order, as amended by the Application. All entities that currently intend to rely on the requested Order have been named as applicants and any other entity that relies on the Order in the future will comply with the terms and conditions of the Application. Applicants request that the relief also apply to any other existing or future registered open-end management investment company that is part of the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Funds.

[4] For purposes of the Application, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

[5] With respect to investments in business development companies, applicants only seek an exemption from section 12(d)(1)(A) of the Act, not section 12(d)(1)(C). Applicants state that, for purposes of the Application, investments in business development companies do not present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies.

[6] Applicants note that a Fund of Funds would purchase and sell shares of a Closed-End Fund through secondary market transactions at market prices rather than through principal transactions with the Closed-End Fund at net asset value. Applicants are not requesting section 17(a) relief to acquire shares of Closed-End Funds and will not rely on the section 17(a) relief granted in the Prior Order for such purpose.

the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. With respect to a Fund of Funds' investment in an Unaffiliated Underlying Fund that is a Closed-End Fund (i) each member of the Group or the Subadviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Closed-End Fund in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or the Subadviser Group will vote its shares of the Closed-End Fund in the same proportion as the vote of all other holders of the same type of such Closed-End Fund's shares (except that any member of the Group or Subadviser Group that is a Separate Account will instead be subject to the voting procedures described below). If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Underlying Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds Subadviser or a person controlling, controlled by or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11930 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66969; File No. 4–546]**

## Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BOX Options Exchange LLC as a Participant

May 11, 2012.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on May 4, 2012, BOX Options Exchange LLC (''BOX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[3] The amendment proposes to add BOX Options as a Participant [4] to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are C2, CBOE, BATS, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BOX Options as a Participant in the Plan. BOX Options has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange [5] may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Sections 3(c) and 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Plan with the only change being the addition of the new participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

### II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act [6] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[7] if it appears to the Commission that such

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[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NASDAQ OMX BX, Inc. (''BOX''), NASDAQ OMX PHLX, Inc. (''Phlx''), NYSE Amex, LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). *See also* Securities Exchange Act Release Nos. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. (''BATS'') as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated (''C2'') as a Participant).

[4] The term ''Participant'' is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[5] Section 2(6) of the Plan defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) Is a ''Participant Exchange'' in the Options Clearing Corporation (''OCC'') (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (''OPRA'') Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. BOX Options has represented that it has met the requirements for being considered an Eligible Exchange. *See* letter from Lisa J. Fall, President, BOX Options, to Elizabeth Murphy, Secretary, Commission, dated May 3, 2012.

[6] 17 CFR 242.608(b)(3)(iii).

[7] 17 CFR 242.608(b)(1).

action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–546 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 4–546. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BOX Options. 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 4–546 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11924 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 17 CFR 200.30–3(a)(29).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66976]**

## Order Granting Application of BOX Options Exchange, LLC for a Limited Exemption From Exchange Act Rule 10b–10(a)(2)(i)(A) Pursuant to Rule 10b–10(f)

May 11, 2012.

## I. Introduction

By letter dated May 11, 2012 (''the Application''), BOX Options Exchange LLC (the ''Exchange'') requests a limited exemption from the requirements of Rule 10b–10(a)(2)(i)(A) under the Securities Exchange Act of 1934 (''Exchange Act'') on behalf of its Options Participants that execute trades as agent for their customers (''Participants'')[1] on BOX Market LLC, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act (''BOX''). As discussed in the Application, BOX will operate a fully automated electronic book (''BOX Book'') for orders to buy or sell securities (''orders'') with a continuous, automated matching function which will provide for strict price-time priority execution (''Trading System'').[2] The BOX Book and the Exchange Rules provide for post trade anonymity through settlement for trades executed on BOX.[3]

[1] Unless otherwise defined in this order, defined terms used have the same meaning as described in the Exchange Rules.

[2] *See* Exchange Rule 7130. The Exchange notes that executions through the Price Improvement Period (''PIP'') as set forth in Exchange Rule 7150 are an exception to the strict price-time priority execution that occurs on the BOX Book.

[3] As explained in the Application, the Exchange does not request an exemption from Rule 10b–10(a)(2)(i)(A) for when it reveals the identity of a Participant or a Participant's clearing firm: (i) For regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Clearing Corporation or Clearing Participant (such as the Options Clearing Corporation) ceases to act for a Participant or the Participant's clearing firm, and determines not to guarantee the settlement of the Participant's trades.

## II. Background[4]

*a. The Exchange*

The Exchange is registered as a national securities exchange under Section 6 of the Exchange Act.[5] The Participants of the Exchange consist of broker-dealers registered with the Exchange, as Participants, for the purposes of participating in options trading. Participants are entitled to enter orders in, and receive executions through, the BOX Book or otherwise.

BOX, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act, will operate the BOX Book for orders with a continuous, automated matching function, in compliance with the Exchange's rules and Regulation NMS under the Exchange Act (''Regulation NMS'').[6] Liquidity will be derived from orders to buy and orders to sell submitted to BOX electronically by Participants from remote locations.

The BOX Book and the Exchange rules provide for strict price-time priority execution.[7] Under Exchange Rule 7130, orders will be prioritized on a strict price-time basis, first by price and then by time. Incoming orders will be first matched for execution against orders in the BOX Book. Orders that cannot be executed are eligible for routing to away trading centers.[8] All trades will be executed through the Trading System on an anonymous basis, except for Directed Orders.[9] The transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System, but shall not reveal contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.[10]

[4] Background information is derived from the Application.

[5] The Exchange received approval of its application for registration as a national securities exchange on April 27, 2012. *See* Securities Exchange Act Release No. 66871 (April 27, 2012). Exchange rules cited herein were approved as part of that application.

[6] *See* 17 CFR 242.600 *et seq.*

[7] *See supra* note 2. According to the Exchange, executions through the PIP, as set forth in Exchange Rules 7130 and 7150, are an exception to the price-time priority execution that occurs on the BOX Book.

[8] *See* Exchange Rule 15030. The Exchange understands that the exemptive relief would not apply to any situation in which the Trading System routes an order to all away trading centers for execution, as such executions would be governed by the rules of the away trading center.

[9] *See* Exchange Rule 8040(d)(1). Directed Orders on BOX are not anonymous. The identity of the Participant sending the Directed Order is provided to the Market Maker recipient. As explained in the Application, Directed Orders would not be subject to the requested relief.

[10] *See* Exchange Rule 7130(a)(6).

The BOX Book's matching system algorithm permits orders originated by a Participant to execute against other orders from the same Participant on the same basis as orders from other Participants. In the BOX Book's handling of displayed orders, which is based on strict price-time priority, a Participant could receive an execution against itself, and under the Exchange's Rules, the Participant would not know that it was the contra-side of the trade at the time of execution. BOX does, however, permit a Participant to prevent its incoming orders from being executed against its own trading interest. Specifically, Participants have the ability to use Participant match trade prevention. A Participant may direct that its Market Maker or Principal Orders entered on BOX not execute against its own Market Maker quotes or orders, or its Principal Orders that are resting on the BOX Book. In such a case, the quantity of the incoming order that would otherwise trade against the quote/order from the same Participant will be cancelled back to the entering party.[11]

*b. Rule 10b–10*

Rule 10b–10 under the Exchange Act generally requires broker-dealers effecting a customer transaction in securities (other than U.S. savings bonds or municipal securities)[12] to provide a written notification to its customer, at or before completion of a securities transaction, that discloses information specific to the transaction. In particular, under Rule 10b–10(a)(2)(i)(A), when a broker-dealer acts as agent for a customer, some other person, or for both the customer and some other person, the broker-dealer must disclose ''[t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer'' (the ''Contra-Party Identity Requirement'').

**III. Relief Sought**

As explained in the Application, trades are executed with total anonymity on BOX, where the identity of the actual contra-party is not revealed when the trade is executed, except with respect to Directed Orders.[13] Because of this, Participants will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Participants would not be able to comply with the Contra-Party Identity Requirement of Rule 10b–10. To permit Participants to utilize BOX without violating Rule 10b–10, the Exchange, on behalf of such Participants, is seeking an exemption under Rule 10b–10(f), from the Contra-Party Identity Requirement of Rule 10b–10 when Participants execute transactions on BOX, as described in the Application.

**IV. Conclusion**

Based on the facts and representations contained in the Application, we find that it is appropriate and in the public interest and consistent with the protection of investors to grant the Exchange, on behalf of its Participants, a limited exemption from the Contra-Party Identity Requirement in Rule 10b–10(a)(2)(i)(A).

*It is hereby ordered,* pursuant to Rule 10b–10(f) of the Exchange Act, that Exchange Participants, based on the representations and facts contained in the Application, are exempt from the requirements of Rule 10b–10(a)(2)(i)(A) of the Exchange Act, to the extent that Participants execute trades for their customers on the Exchange using the BOX Trading System. This exemption is limited to trades that Participants execute on BOX using the post trade anonymity feature described in the Application.[14]

The foregoing exemption is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11931 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

[11] *See* Exchange Rule 7130(a)(4).

[12] Municipal securities are subject to the transaction confirmations requirements under Rule G–15 of the Municipal Securities Rulemaking Board.

[13] *See supra* note 9.

[14] This exemption does not apply: (a) To orders routed to an away trading center for execution; (b) to Directed Orders; (c) under the situation described in note 3 *supra;* or (d) to the situation described in note 13 of the Application.

[15] 17 CFR 200.30–3(32).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, May 15, 2012 at 2:00 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(4) and (8) and 17 CFR 200.402(a)(4) and (8), permit consideration of the scheduled matter at the Closed Meeting. Certain staff members who have an interest in the matter also may be present.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the May 15, 2012 Closed Meeting will be an examination of a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 15, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–12093 Filed 5–15–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission held a Closed Meeting on Saturday, May 12, 2012 at 11:00 a.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(4) and (8) and 17 CFR 200.402(a)(4) and (8), permit consideration of the scheduled matter at the Closed Meeting. Certain staff members who have an interest in the matter also were present.

Commissioner Gallagher, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the May 12, 2012 Closed Meeting was an examination of a financial institution.

Dated: May 14, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–12020 Filed 5–15–12; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Order of Suspension of Trading; In the Matter of 1–800–ATTORNEY, Inc., et al.

May 14, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 1–800–ATTORNEY, Inc. because questions have arisen as to its operating status, if any. 1–800–ATTORNEY, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ATTY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accessible Software Inc. because questions have arisen as to its operating status, if any. Accessible Software Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ASWE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accom, Inc. because questions have arisen as to its operating status, if any. Accom, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ACMM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AccuHealth, Inc. because questions have arisen as to its operating status, if any. AccuHealth, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AHLHQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Adaptive Solutions, Inc. because questions have arisen as to its operating status, if any. Adaptive Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ADPVQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AHSI, Inc. because questions have arisen as to its operating status, if any. AHSI, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AHSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ainslie Corp. because questions have arisen as to its operating status, if any. Ainslie Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ANSE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Cattle Co., Inc. because questions have arisen as to its operating status, if any. American Cattle Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ALCC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Interactive Media, Inc. because questions have arisen as to its operating status, if any. American Interactive Media, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AIME.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AmeriStar International Holdings Corp. because questions have arisen as to its operating status, if any. AmeriStar International Holdings Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AIHC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Angeles Corp. because questions have arisen as to its operating status, if any. Angeles Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ANGC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aprogenex, Inc. because questions have arisen as to its operating status, if any. Aprogenex, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''APGX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ardent Communications, Inc. because questions have arisen as to its operating status, if any. Ardent Communications, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ARDTQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asante Technologies, Inc. because questions have arisen as to its operating status, if any. Asante Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ASNL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ASFG, Inc. because questions have arisen as to its operating status, if any. ASFG, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ASFJ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asia Pacific Engineering Solutions International, Inc. because questions have arisen as to its operating status, if any. Asia Pacific Engineering Solutions International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''APCI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Atlantic Central Enterprise Ltd. because questions have arisen as to its operating status, if any. Atlantic Central Enterprise Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ALCN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ATM Capitol Co. because questions have arisen as to its operating status, if any. ATM Capitol Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ATMA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Avatex Corp. because questions have arisen as to its operating status, if any. Avatex Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AVATQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Avisana Corp. because questions have arisen as to its operating status, if any. Avisana Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''AVSA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Axtive Corporation because questions have arisen as to its operating status, if any. Axtive Corporation is quoted on OTC

Link operated by OTC Markets Group, Inc. under the ticker symbol ''AXTC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Batterymarch Trust because questions have arisen as to its operating status, if any. Batterymarch Trust is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BTYM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bedford Holdings, Inc. because questions have arisen as to its operating status, if any. Bedford Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BFHI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beijing Logistic, Inc. because questions have arisen as to its operating status, if any. Beijing Logistic, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BJGL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Belle Isle Corp. because questions have arisen as to its operating status, if any. Belle Isle Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BILSU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ben Ezra, Weinstein & Co. because questions have arisen as to its operating status, if any. Ben Ezra, Weinstein & Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BNEZ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bestway Coach Express, Inc. because questions have arisen as to its operating status, if any. Bestway Coach Express, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BWCX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Biomedtex, Inc. because questions have arisen as to its operating status, if any. Biomedtex, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BMDX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BMJ Medical Management, Inc. because questions have arisen as to its operating status, if any. BMJ Medical Management, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BONSQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bon Coeur, Inc. because questions have arisen as to its operating status, if any. Bon Coeur, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BOCU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BRIAZZ, Inc. because questions have arisen as to its operating status, if any. BRIAZZ, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BRZZQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Buffalo, Inc. because questions have arisen as to its operating status, if any. Buffalo, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BUFO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Burr Oak Coal Corp. because questions have arisen as to its operating status, if any. Burr Oak Coal Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BOAK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cabo Group, Ltd. (The) because questions have arisen as to its operating status, if any. Cabo Group, Ltd. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CGLT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CallNOW.com, Inc. because questions have arisen as to its operating status, if any. CallNOW.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CALN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capital Media Group Ltd. because questions have arisen as to its operating status, if any. Capital Media Group Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CPMG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capitol First Corp. because questions have arisen as to its operating status, if any. Capitol First Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CFCO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cartis, Inc. because questions have arisen as to its operating status, if any. Cartis, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CARI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CCI Group, Inc. because questions have arisen as to its operating status, if any. CCI Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CCIG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Centra Capital Corp. because questions have arisen as to its operating status, if any. Centra Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CENC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CES International, Inc. because questions have arisen as to its operating status, if any. CES International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CSNL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chambersburg Engineering Co. because questions have arisen as to its operating status, if any. Chambersburg Engineering Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CEGR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chariot Group, Inc. because questions have arisen as to its operating status, if any. Chariot Group, Inc. is quoted on OTC

Link operated by OTC Markets Group, Inc. under the ticker symbol ''CGRU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chemicorp International, Inc. because questions have arisen as to its operating status, if any. Chemicorp International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CHEM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Chemtrak, Inc. because questions have arisen as to its operating status, if any. Chemtrak, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CTKI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Cable & Communication, Inc. because questions have arisen as to its operating status, if any. China Cable & Communication, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CCCI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China TianRen Organic Food, Inc. because questions have arisen as to its operating status, if any. China TianRen Organic Food, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CTRI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ChinaMallUSA.com, Inc. because questions have arisen as to its operating status, if any. ChinaMallUSA.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CHML.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Christian Brothers, Inc. because questions have arisen as to its operating status, if any. Christian Brothers, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CHBI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ciao Cucina Corp. because questions have arisen as to its operating status, if any. Ciao Cucina Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CIAQQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Clarent Corp. because questions have arisen as to its operating status, if any. Clarent Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CLRN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Clinicorp, Inc. because questions have arisen as to its operating status, if any. Clinicorp, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CLNI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CNF Technologies, Inc. because questions have arisen as to its operating status, if any. CNF Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CNFT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Columbia Management Co. because questions have arisen as to its operating status, if any. Columbia Management Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CLMB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Columbia Ventures, Inc. because questions have arisen as to its operating status, if any. Columbia Ventures, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''COVE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Commonwealth Oil Refining Co., Inc. because questions have arisen as to its operating status, if any. Commonwealth Oil Refining Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CWLO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Community Medical Transport, Inc. because questions have arisen as to its operating status, if any. Community Medical Transport, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CMTI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Computer Learning Centers, Inc. because questions have arisen as to its operating status, if any. Computer Learning Centers, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CLCXQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Computerized Thermal Imaging, Inc. because questions have arisen as to its operating status, if any. Computerized Thermal Imaging, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''COIB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Condor Technology Solutions, Inc. because questions have arisen as to its operating status, if any. Condor Technology Solutions, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CTSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Continental Information Systems Corp. because questions have arisen as to its operating status, if any. Continental Information Systems Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CISC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Conversion Industries, Inc. because questions have arisen as to its operating status, if any. Conversion Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CVII.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Country Maid Financial, Inc. because questions have arisen as to its operating status, if any. Country Maid Financial, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CMFI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of C–Phone Corp. because questions have arisen as to its operating status, if any. C–Phone Corp. is quoted on OTC Link operated

by OTC Markets Group, Inc. under the ticker symbol ''CFON.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cray Computer Corp. because questions have arisen as to its operating status, if any. Cray Computer Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CRYYQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Creative Gourmet, Inc. because questions have arisen as to its operating status, if any. Creative Gourmet, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CGOM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Credit Depot Corp. because questions have arisen as to its operating status, if any. Credit Depot Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CDDJ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crowley Maritime Corp. because questions have arisen as to its operating status, if any. Crowley Maritime Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CWLM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crowley Milner & Company because questions have arisen as to its operating status, if any. Crowley Milner & Company is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CWYM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crown Andersen Inc. because questions have arisen as to its operating status, if any. Crown Andersen Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CRAN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crown City Plating Co. because questions have arisen as to its operating status, if any. Crown City Plating Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CCPGQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crown Financial Holdings, Inc. because questions have arisen as to its operating status, if any. Crown Financial Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CFGI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CTI Technology, Inc. because questions have arisen as to its operating status, if any. CTI Technology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CTIT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CybeRecord, Inc. because questions have arisen as to its operating status, if any. CybeRecord, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''CYRD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Data Systems of Oregon because questions have arisen as to its operating status, if any. Data Systems of Oregon is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DSTO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Datatrend Services, Inc. because questions have arisen as to its operating status, if any. Datatrend Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DATV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Defense Technology Systems, Inc. because questions have arisen as to its operating status, if any. Defense Technology Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DFTS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Design Media Technology, Inc. because questions have arisen as to its operating status, if any. Design Media Technology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DMTK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Armor Inc. because questions have arisen as to its operating status, if any. Digital Armor Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DTALQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DNA Medical Technologies, Inc. because questions have arisen as to its operating status, if any. DNA Medical Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DNAT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of dot1Web, Inc. because questions have arisen as to its operating status, if any. Dot1Web, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DTWB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of dotwap.com Holdings Corp. because questions have arisen as to its operating status, if any. Dotwap.com Holdings Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DWAP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DualStar Technologies Corp. because questions have arisen as to its operating status, if any. DualStar Technologies Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DSTR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Duncan Hill Co., Ltd. because questions have arisen as to its operating status, if any. Duncan Hill Co., Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DUNC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dunes Hotel & Casinos, Inc. because questions have arisen as to its operating status, if any. Dunes Hotel & Casinos, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DUNE.''

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of Dynamic Leisure Corp. because questions have arisen as to its operating status, if any. Dynamic Leisure Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''DYLI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EAC Industries, Inc. because questions have arisen as to its operating status, if any. EAC Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EACI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eagle-Picher Industries, Inc. because questions have arisen as to its operating status, if any. Eagle-Picher Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EGLP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of eChapman, Inc. because questions have arisen as to its operating status, if any. eChapman, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ECMN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EGM International, Inc. because questions have arisen as to its operating status, if any. EGM International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EGML.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electro Brain International Corp. because questions have arisen as to its operating status, if any. Electro Brain International Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EBIC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electronic Transmission Corp. because questions have arisen as to its operating status, if any. Electronic Transmission Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ETSM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Elsinore Corp. because questions have arisen as to its operating status, if any. Elsinore Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ELSO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Emergisoft Holding, Inc. because questions have arisen as to its operating status, if any. Emergisoft Holding, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ESHG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of *E–Monee.com,* Inc. because questions have arisen as to its operating status, if any. *E–Monee.com,* Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EMNC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enerphaze Corp. because questions have arisen as to its operating status, if any. Enerphaze Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EPHZ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enhance Biotech, Inc. because questions have arisen as to its operating status, if any. Enhance Biotech, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EBOI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enviro Global Corp. because questions have arisen as to its operating status, if any. Enviro Global Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ENVG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Environmental Asset Management Inc. because questions have arisen as to its operating status, if any. Environmental Asset Management Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EVAM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ETI International, Inc. because questions have arisen as to its operating status, if any. ETI International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ETIC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Excal Enterprises, Inc. because questions have arisen as to its operating status, if any. Excal Enterprises, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EXCL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fastlane Footwear, Inc. because questions have arisen as to its operating status, if any. Fastlane Footwear, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FSLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Firamada Inc. because questions have arisen as to its operating status, if any. Firamada Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FAMH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Firebrand Financial Group, Inc. because questions have arisen as to its operating status, if any. Firebrand Financial Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FFGI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Look Media, Inc. because questions have arisen as to its operating status, if any. First Look Media, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FRST.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Medical Group, Inc. because questions have arisen as to its operating status, if any. First Medical Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FMDG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of First Sun South Corp. because questions have arisen as to its operating status, if any. First Sun South Corp. is quoted on OTC

Link operated by OTC Markets Group, Inc. under the ticker symbol ''FSSU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Florida Development Fund (1995), Inc. because questions have arisen as to its operating status, if any. Florida Development Fund (1995), Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FLDV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Florida Partners Corp. because questions have arisen as to its operating status, if any. Florida Partners Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FPCO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Florsheim Group, Inc. (FGI Group, Inc.) because questions have arisen as to its operating status, if any. Florsheim Group, Inc. (FGI Group, Inc.) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FLSCQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fone America, Inc. because questions have arisen as to its operating status, if any. Fone America, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FONM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fruehauf Trailer Corp. because questions have arisen as to its operating status, if any. Fruehauf Trailer Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FTCFQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Future Healthcare, Inc. because questions have arisen as to its operating status, if any. Future Healthcare, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''FHCI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gargoyles, Inc. because questions have arisen as to its operating status, if any. Gargoyles, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GOYL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of General Broadcasting Inc. because questions have arisen as to its operating status, if any. General Broadcasting Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GNBR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of General Store International Corp. (The) because questions have arisen as to its operating status, if any. General Store International Corp. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GSIL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Georgia 400 Industries, Inc. because questions have arisen as to its operating status, if any. Georgia 400 Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GAID.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Glengarry Holdings Ltd. because questions have arisen as to its operating status, if any. Glengarry Holdings Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GLGH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global iTechnology, Inc. because questions have arisen as to its operating status, if any. Global iTechnology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GITN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Teledata Corp. because questions have arisen as to its operating status, if any. Global Teledata Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GDAC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gold Lake Mines, Inc. because questions have arisen as to its operating status, if any. Gold Lake Mines, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GOLM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Grant Enterprise, Ltd. because questions have arisen as to its operating status, if any. Grant Enterprise, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GRET.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Great Train Store Co. (The) because questions have arisen as to its operating status, if any. Great Train Store Co. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GTRNQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greenleaf Technologies Corp. because questions have arisen as to its operating status, if any. Greenleaf Technologies Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GLFC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GreyStone Digital Technology, Inc. because questions have arisen as to its operating status, if any. GreyStone Digital Technology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GSTN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Harriet & Henderson Yarns, Inc. because questions have arisen as to its operating status, if any. Harriet & Henderson Yarns, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HHYN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hartz Restaurants International, Inc. because questions have arisen as to its operating status, if any. Hartz Restaurants International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HRII.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hayden Hall, Inc. because questions have arisen as to its operating status, if any. Hayden Hall, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HYDN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HealthRenu Medical, Inc. because questions have arisen as to its operating status, if any. HealthRenu Medical, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HRUM''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Helionetics, Inc. because questions have arisen as to its operating status, if any. Helionetics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HLXC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Henley Healthcare, Inc. because questions have arisen as to its operating status, if any. Henley Healthcare, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HENL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hi-Rise Recycling Systems, Inc. because questions have arisen as to its operating status, if any. Hi-Rise Recycling Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HIRI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home Energy Savings Corp. because questions have arisen as to its operating status, if any. Home Energy Savings Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HESV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home Security International, Inc. because questions have arisen as to its operating status, if any. Home Security International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HMSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home Solutions Health, Inc. because questions have arisen as to its operating status, if any. Home Solutions Health, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HSHL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home State Holdings, Inc. because questions have arisen as to its operating status, if any. Home State Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HOMH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HomeGold Financial, Inc. because questions have arisen as to its operating status, if any. HomeGold Financial, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HGFNQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Homeland Holding Corp. because questions have arisen as to its operating status, if any. Homeland Holding Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HMLD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hubco Exploration, Inc. because questions have arisen as to its operating status, if any. Hubco Exploration, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HBCE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hungarian Broadcasting Corp. because questions have arisen as to its operating status, if any. Hungarian Broadcasting Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HBCO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Huntco, Inc. because questions have arisen as to its operating status, if any. Huntco, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HCOIQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HyperFeed Technologies, Inc. because questions have arisen as to its operating status, if any. HyperFeed Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HYPRQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of HyperSecur Corp. because questions have arisen as to its operating status, if any. HyperSecur Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''HYUR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iBX Group, Inc. because questions have arisen as to its operating status, if any. iBX Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IBXG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IFS International Holdings, Inc. because questions have arisen as to its operating status, if any. IFS International Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IFSH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IGIA, Inc. because questions have arisen as to its operating status, if any. IGIA, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IGAI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ImageMatrix Corp. because questions have arisen as to its operating status, if any. ImageMatrix Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IMCX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IMC Mortgage Co. because questions have arisen as to its operating status, if any. IMC Mortgage Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IMCC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IMP, Inc. because questions have arisen as to its operating status, if any. IMP, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IMPX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Imperial

Credit Industries, Inc. because questions have arisen as to its operating status, if any. Imperial Credit Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ICII.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IMT, Inc. because questions have arisen as to its operating status, if any. IMT, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IMIT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Inamco International Corp. because questions have arisen as to its operating status, if any. Inamco International Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IICC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Incomnet, Inc. because questions have arisen as to its operating status, if any. Incomnet, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ICNT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Industrial Imaging Corp. because questions have arisen as to its operating status, if any. Industrial Imaging Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''INIM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Industrial Technologies, Inc. because questions have arisen as to its operating status, if any. Industrial Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''INTE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innovative Materials, Inc. because questions have arisen as to its operating status, if any. Innovative Materials, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''INOMA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Instruments For Industry, Inc because questions have arisen as to its operating status, if any. Instruments For Industry, Inc is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''INSF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of In-Systcom, Inc. because questions have arisen as to its operating status, if any. In-Systcom, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISYX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Information Systems, Inc. because questions have arisen as to its operating status, if any. Integrated Information Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IISX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Services Group, Inc. because questions have arisen as to its operating status, if any. Integrated Services Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISVG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrated Waste Services, Inc. because questions have arisen as to its operating status, if any. Integrated Waste Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IWSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of INTER*ACT Communications, Inc. because questions have arisen as to its operating status, if any. INTER*ACT Communications, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IAMM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Media Technologies, Inc. because questions have arisen as to its operating status, if any. Interactive Media Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IMDI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Television Networks, Inc. because questions have arisen as to its operating status, if any. Interactive Television Networks, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ITTV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Intercontinental Holdings, Inc. because questions have arisen as to its operating status, if any. Intercontinental Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ICLH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Building Concepts Ltd. because questions have arisen as to its operating status, if any. International Building Concepts Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IBDG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Capital Equipment, Ltd. because questions have arisen as to its operating status, if any. International Capital Equipment, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ICQLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interpharm Holdings, Inc. because questions have arisen as to its operating status, if any. Interpharm Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IPAH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interspeed, Inc. because questions have arisen as to its operating status, if any. Interspeed, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISPD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of InterWorld Corp. because questions have arisen as to its operating status, if any. InterWorld Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ITWR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Intrenet,

Inc. because questions have arisen as to its operating status, if any. Intrenet, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IRNE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IPTV Corp. because questions have arisen as to its operating status, if any. IPTV Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IPTV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Iridium World Communications Ltd. because questions have arisen as to its operating status, if any. Iridium World Communications Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''IRIDQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Istec-Industries & Technologies, Ltd. because questions have arisen as to its operating status, if any. Istec-Industries & Technologies, Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ISEF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of IT Group Holdings, Inc. because questions have arisen as to its operating status, if any. IT Group Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ITGL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of J.Rish Group, Inc. (The) because questions have arisen as to its operating status, if any. J.Rish Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RISH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of JEC Lasers, Inc. because questions have arisen as to its operating status, if any. JEC Lasers, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''JECL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of JPE, Inc. because questions have arisen as to its operating status, if any. JPE, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''JPEI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kentucky Central Life Insurance Co. because questions have arisen as to its operating status, if any. Kentucky Central Life Insurance Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''KENCA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Krause's Furniture, Inc. because questions have arisen as to its operating status, if any. Krause's Furniture, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''KAUSQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kuala Healthcare, Inc. because questions have arisen as to its operating status, if any. Kuala Healthcare, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''KUAL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of L.A. Gear, Inc. because questions have arisen as to its operating status, if any. L.A. Gear, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LAGR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lady Baltimore Foods, Inc. because questions have arisen as to its operating status, if any. Lady Baltimore Foods, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LDYBA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LeaseSmart, Inc. because questions have arisen as to its operating status, if any. LeaseSmart, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LSMJ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lexington Healthcare Group Inc. because questions have arisen as to its operating status, if any. Lexington Healthcare Group Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LEXI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Liberate Technologies because questions have arisen as to its operating status, if any. Liberate Technologies is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LBTE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Liberty Group Holdings, Inc. because questions have arisen as to its operating status, if any. Liberty Group Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LGHI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Liberty International Entertainment, Inc. because questions have arisen as to its operating status, if any. Liberty International Entertainment, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LIEI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LINC Capital, Inc. because questions have arisen as to its operating status, if any. LINC Capital, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LNCC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Link Energy, LLC because questions have arisen as to its operating status, if any. Link Energy, LLC is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LNKE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LogicalOptions International, Inc. because questions have arisen as to its operating status, if any. LogicalOptions International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LOGO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LogiMetrics, Inc. because questions have arisen as to its operating status, if any. LogiMetrics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LGMTA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lois/USA, Inc. because questions have arisen as to its operating status, if any. Lois/USA, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LSUS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Louisiana Central Oil & Gas Co. because questions have arisen as to its operating status, if any. Louisiana Central Oil & Gas Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LCNTU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LoyaltyPoint, Inc. because questions have arisen as to its operating status, if any. LoyaltyPoint, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LYLP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LTI Technologies, Inc. because questions have arisen as to its operating status, if any. LTI Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LTTI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LTWC Corp. because questions have arisen as to its operating status, if any. LTWC Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LTWC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lucille Farms, Inc. because questions have arisen as to its operating status, if any. Lucille Farms, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''LUCY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of M.POS Inc. because questions have arisen as to its operating status, if any. M.POS Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MPSN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Malibu Entertainment Worldwide, Inc. because questions have arisen as to its operating status, if any. Malibu Entertainment Worldwide, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MBEW.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Marine Management Systems, Inc. because questions have arisen as to its operating status, if any. Marine Management Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MMSY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Marine Sports, Inc. because questions have arisen as to its operating status, if any. Marine Sports, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MRSP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Marnetics Broadband Technologies Ltd. because questions have arisen as to its operating status, if any. Marnetics Broadband Technologies Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MXBTF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Master Woodcraft, Inc. because questions have arisen as to its operating status, if any. Master Woodcraft, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MCFL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Materials Protection Technologies Inc. because questions have arisen as to its operating status, if any. Materials Protection Technologies Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MTXLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Matrix Denture Systems International, Inc. because questions have arisen as to its operating status, if any. Matrix Denture Systems International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MDSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MaxWorldwide, Inc. because questions have arisen as to its operating status, if any. MaxWorldwide, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MAXW.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Meadowbrook Golf Group Inc. because questions have arisen as to its operating status, if any. Meadowbrook Golf Group Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MGGI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Media 100, Inc. because questions have arisen as to its operating status, if any. Media 100, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MDEA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Media Logic, Inc. because questions have arisen as to its operating status, if any. Media Logic, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MDLG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MediaWorx, Inc. because questions have arisen as to its operating status, if any. MediaWorx, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MEWX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medical Sciences, Inc. because questions have arisen as to its operating status, if any. Medical Sciences, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MCLS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medical Technology Products, Inc. because questions have arisen as to its operating status, if any. Medical Technology Products, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MTPX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medra Corp. because questions have arisen as to its

operating status, if any. Medra Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MDRA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mega Group, Inc. because questions have arisen as to its operating status, if any. Mega Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MGINQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mellin Industries, Inc. because questions have arisen as to its operating status, if any. Mellin Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MELL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Meridian Software, Inc. because questions have arisen as to its operating status, if any. Meridian Software, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MSWI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Merit Studios, Inc. because questions have arisen as to its operating status, if any. Merit Studios, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MRITQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metals Research Group Corp. because questions have arisen as to its operating status, if any. Metals Research Group Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MLRA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Metro Airlines, Inc. because questions have arisen as to its operating status, if any. Metro Airlines, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MEAI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MidasTrade.com, Inc. because questions have arisen as to its operating status, if any. MidasTrade.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MIDS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MIIX Group, Inc. (The) because questions have arisen as to its operating status, if any. MIIX Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MIIX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Miniscribe Corp. because questions have arisen as to its operating status, if any. Miniscribe Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MINY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Miravant Medical Technologies because questions have arisen as to its operating status, if any. Miravant Medical Technologies is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MRVT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mobile Ready Entertainment Corp. because questions have arisen as to its operating status, if any. Mobile Ready Entertainment Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MRDY.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MyGlobalConcierge.com, Inc. because questions have arisen as to its operating status, if any. MyGlobalConcierge.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''MGCG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nahdree Group Ltd. (The). because questions have arisen as to its operating status, if any. Nahdree Group Ltd. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NDRE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Cable, Inc. because questions have arisen as to its operating status, if any. National Cable, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NCAB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Terminals Corp. because questions have arisen as to its operating status, if any. National Terminals Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NTRM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nelson (L.B.) Corp. because questions have arisen as to its operating status, if any. Nelson (L.B.) Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NLBC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NetImpact Holdings, Inc. because questions have arisen as to its operating status, if any. NetImpact Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NTHD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NetObjects, Inc. because questions have arisen as to its operating status, if any. NetObjects, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NETO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Netplex Group, Inc. (The) because questions have arisen as to its operating status, if any. Netplex Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NTPL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Network Connection, Inc. (The) because questions have arisen as to its operating status, if any. Network Connection, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TNCXQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Neuro Bioscience, Inc. because questions have arisen as to its operating status, if any. Neuro Bioscience, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NRBO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New York & Harlem Railroad Co. because questions have arisen as to its operating status, if any. New York & Harlem Railroad Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NYHA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NewGen Technologies, Inc. because questions have arisen as to its operating status, if any. NewGen Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NWGN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Next Generation Technolgy Holdings, Inc. because questions have arisen as to its operating status, if any. Next Generation Technology Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NGTHQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nextrata Energy Inc. because questions have arisen as to its operating status, if any. Nextrata Energy Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NXTA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of North American Building, Inc. because questions have arisen as to its operating status, if any. North American Building, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NABD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Northeast Digital Networks, Inc. because questions have arisen as to its operating status, if any. Northeast Digital Networks, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''GSMI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NorthPoint Communications Group, Inc. because questions have arisen as to its operating status, if any. NorthPoint Communications Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NPNTQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nuko Information Systems, Inc. because questions have arisen as to its operating status, if any. Nuko Information Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NUKO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of nVIEW Corp. because questions have arisen as to its operating status, if any. nVIEW Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''NVUE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ocean Power Corp. because questions have arisen as to its operating status, if any. Ocean Power Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PWREQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ohmstar Home Lending LLC because questions have arisen as to its operating status, if any. Ohmstar Home Lending LLC is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OMST.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Omega Ventures Group, Inc. because questions have arisen as to its operating status, if any. Omega Ventures Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OMGV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Omni Multimedia Group, Inc. because questions have arisen as to its operating status, if any. Omni Multimedia Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OMMG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of One World Nutrition, Inc. because questions have arisen as to its operating status, if any. One World Nutrition, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OWDN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Oneita Industries, Inc. because questions have arisen as to its operating status, if any. Oneita Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ONTAQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OneLink Corp. because questions have arisen as to its operating status, if any. OneLink Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OLNK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OneSource Technologies, Inc. because questions have arisen as to its operating status, if any. OneSource Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OSRC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Open Plan Systems, Inc. because questions have arisen as to its operating status, if any. Open Plan Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLANQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Optomedic Medical Technologies Ltd. because questions have arisen as to its operating status, if any. Optomedic Medical Technologies Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''KPLNF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Oriole Systems, Inc. because questions have arisen as to its operating status, if any. Oriole Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ORLSF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OTC Wireless, Inc. because questions have arisen as to its operating status, if any. OTC Wireless, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OTCL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OTR Express, Inc. because questions have arisen as to its operating status, if any. OTR Express, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''OTRX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Panama Coca-Cola Bottling Co., Inc. because questions have arisen as to its operating status, if any. Panama Coca-Cola Bottling Co., Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PCOK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Paper Warehouse, Inc. because questions have arisen as to its operating status, if any. Paper Warehouse, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PWHSQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pentronics Industries, Inc. because questions have arisen as to its operating status, if any. Pentronics Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PNTN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Phoenix Gold International, Inc. because questions have arisen as to its operating status, if any. Phoenix Gold International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PGLD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pilot Therapeutics Holdings, Inc. because questions have arisen as to its operating status, if any. Pilot Therapeutics Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLTT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pioneer Commercial Funding Corp. because questions have arisen as to its operating status, if any. Pioneer Commercial Funding Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PCFC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Plastic Recycling, Inc. because questions have arisen as to its operating status, if any. Plastic Recycling, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLTK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PlayNet Technologies, Inc. because questions have arisen as to its operating status, if any. PlayNet Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLYI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pluma, Inc. because questions have arisen as to its operating status, if any. Pluma, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLUAQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PMD Investment Co. because questions have arisen as to its operating status, if any. PMD Investment Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PMDI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Portivity, Inc. because questions have arisen as to its operating status, if any. Portivity, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''BRLS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Precision Optics, Inc. because questions have arisen as to its operating status, if any. Precision Optics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PREO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Preiss Byron Multimedia, Inc. because questions have arisen as to its operating status, if any. Preiss Byron Multimedia, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RSVP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Presidion Corp. because questions have arisen as to its operating status, if any. Presidion Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PSDI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pressure Piping Components, Inc. because questions have arisen as to its operating status, if any. Pressure Piping Components, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PPCI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prestige Graphics, Inc. because questions have arisen as to its operating status, if any. Prestige Graphics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PGPI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PreventCo, Inc. because questions have arisen as to its operating status, if any. PreventCo, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PREV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PrimePlayer Incorporated because questions have arisen as to its operating status, if any. PrimePlayer Incorporated is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PPYR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Princeton American Corp. because questions have arisen as to its operating status, if any. Princeton American Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PAMC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Princeton Chemical Research, Inc. because questions have arisen as to its operating status, if any. Princeton Chemical Research, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PRCH.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ProMedCo Management Co. because questions have arisen as to its operating status, if any.

ProMedCo Management Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PMCOQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Proterion Corporation because questions have arisen as to its operating status, if any. Proterion Corporation is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PROI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Public Service Investment & Management Corp. because questions have arisen as to its operating status, if any. Public Service Investment & Management Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PSIM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Publishers Equipment Corp. because questions have arisen as to its operating status, if any. Publishers Equipment Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PEQU.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pure Vanilla eXchange, Inc. because questions have arisen as to its operating status, if any. Pure Vanilla eXchange, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PVNX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quality Data Processing, Inc. because questions have arisen as to its operating status, if any. Quality Data Processing, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''QDTA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Radio World Corp. because questions have arisen as to its operating status, if any. Radio World Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RAWO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Receptors, Inc. because questions have arisen as to its operating status, if any. Receptors, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RCRS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Regent Assisted Living, Inc. because questions have arisen as to its operating status, if any. Regent Assisted Living, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RGNT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Renaissance Capital Group, Inc. because questions have arisen as to its operating status, if any. Renaissance Capital Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RNCG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Response Oncology, Inc. because questions have arisen as to its operating status, if any. Response Oncology, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ROIX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Robomatix Technologies Ltd. because questions have arisen as to its operating status, if any. Robomatix Technologies Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RBMXF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rodman & Renshaw Capital Group, Inc. because questions have arisen as to its operating status, if any. Rodman & Renshaw Capital Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RRSHQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Room Plus, Inc. because questions have arisen as to its operating status, if any. Room Plus, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PLSSQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Royal Palm Beach Colony, L.P. because questions have arisen as to its operating status, if any. Royal Palm Beach Colony, L.P. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RPAML.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of R–Tec Holding, Inc. because questions have arisen as to its operating status, if any. R–Tec Holding, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RTHG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RxBazaar, Inc. because questions have arisen as to its operating status, if any. RxBazaar, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''RXBZ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sanders Confectionary Products, Inc. because questions have arisen as to its operating status, if any. Sanders Confectionary Products, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SDCF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Security Asset Capital Corporation because questions have arisen as to its operating status, if any. Security Asset Capital Corporation is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SCYA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Seiler Pollution Control Systems, Inc. because questions have arisen as to its operating status, if any. Seiler Pollution Control Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SEPE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sequel Technology Corp. because questions have arisen as to its operating status, if any. Sequel Technology Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SEQL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Shallbetter Industries, Inc. because questions have arisen as to its operating status, if any. Shallbetter Industries, Inc. is quoted on OTC Link operated by OTC Markets

Group, Inc. under the ticker symbol ''SBNS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Silverado Foods, Inc. because questions have arisen as to its operating status, if any. Silverado Foods, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SVFO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Silvercrest Corp. because questions have arisen as to its operating status, if any. Silvercrest Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SLVI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Simmons-Boardman Publishing Corp. because questions have arisen as to its operating status, if any. Simmons-Boardman Publishing Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SBPG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SimPlayer.com Ltd. because questions have arisen as to its operating status, if any. SimPlayer.com Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SMPLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SISCOM, Inc. because questions have arisen as to its operating status, if any. SISCOM, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SATI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SiVault Systems, Inc. because questions have arisen as to its operating status, if any. SiVault Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SVTLQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SmarTalk TeleServices, Inc. because questions have arisen as to its operating status, if any. SmarTalk TeleServices, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''STKTQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Smith Corona Corp. because questions have arisen as to its operating status, if any. Smith Corona Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SITM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Smith Technology Corp. because questions have arisen as to its operating status, if any. Smith Technology Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SMTQQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SMX Corp. because questions have arisen as to its operating status, if any. SMX Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SMXP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Solo Serve Corp. because questions have arisen as to its operating status, if any. Solo Serve Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SSVR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Speaking Roses International, Inc. because questions have arisen as to its operating status, if any. Speaking Roses International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SRII.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Specialty Chemical Resources, Inc. because questions have arisen as to its operating status, if any. Specialty Chemical Resources, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SCCS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Spectrum Oil Corp. because questions have arisen as to its operating status, if any. Spectrum Oil Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SPOC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Spotlight Homes, Inc. because questions have arisen as to its operating status, if any. Spotlight Homes, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SPHM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Star Entertainment Group, Inc. because questions have arisen as to its operating status, if any. Star Entertainment Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SREN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stars To Go, Inc. because questions have arisen as to its operating status, if any. Stars To Go, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''STGO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sterling Business Solutions Inc. because questions have arisen as to its operating status, if any. Sterling Business Solutions Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''STLB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Storage Computer Corp. because questions have arisen as to its operating status, if any. Storage Computer Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SOSO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stratcomm Media Ltd. because questions have arisen as to its operating status, if any. Stratcomm Media Ltd. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SMMT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Summit Life Corporation because questions have arisen as to its operating status, if any. Summit Life Corporation is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SMLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sundance Homes, Inc. because questions have

arisen as to its operating status, if any. Sundance Homes, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SDHM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sungroup, Inc. because questions have arisen as to its operating status, if any. Sungroup, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SGUP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sunstyle Corp. because questions have arisen as to its operating status, if any. Sunstyle Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SSCO.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SVC Financial Services, Inc. because questions have arisen as to its operating status, if any. SVC Financial Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''SVCX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sykes Datatronics, Inc. because questions have arisen as to its operating status, if any. Sykes Datatronics, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''PSYC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TechLite, Inc. because questions have arisen as to its operating status, if any. TechLite, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''THLT.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telcoa International Corp. because questions have arisen as to its operating status, if any. Telcoa International Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TCOA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Teledigital, Inc. because questions have arisen as to its operating status, if any. Teledigital, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TLDG.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Teletrak Environmental Systems, Inc. because questions have arisen as to its operating status, if any. Teletrak Environmental Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TAES.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tellurian, Inc. because questions have arisen as to its operating status, if any. Tellurian, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TLRN.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TeraForce Technology Corp. because questions have arisen as to its operating status, if any. TeraForce Technology Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TERA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Terminal Applications Group, Inc. because questions have arisen as to its operating status, if any. Terminal Applications Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TAGI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Top Air Manufacturing, Inc. because questions have arisen as to its operating status, if any. Top Air Manufacturing, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TPAM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trans World Airlines, Inc. because questions have arisen as to its operating status, if any. Trans World Airlines, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TWAIQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Transco Realty Trust because questions have arisen as to its operating status, if any. Transco Realty Trust is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TCRTS.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trans-Industries, Inc. because questions have arisen as to its operating status, if any. Trans-Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TRNIQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Transportation Components, Inc. because questions have arisen as to its operating status, if any. Transportation Components, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TUIC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TRISM, Inc. because questions have arisen as to its operating status, if any. TRISM, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TSMX.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TVC Telecom, Inc. because questions have arisen as to its operating status, if any. TVC Telecom, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TVCE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S.A. Floral Products, Inc. because questions have arisen as to its operating status, if any. U.S.A. Floral Products, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ROSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UMC Electronics Co. because questions have arisen as to its operating status, if any. UMC Electronics Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UMCE.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UniCapital Corp. because questions have arisen as to its operating status, if any. UniCapital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UCPC.''

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of Uniglobe.com Inc. because questions have arisen as to its operating status, if any. Uniglobe.com Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UGTRF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UnionFed Financial Corp. because questions have arisen as to its operating status, if any. UnionFed Financial Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UNFD.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unison HealthCare Corp. because questions have arisen as to its operating status, if any. Unison HealthCare Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UNHC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unitel Video, Inc. because questions have arisen as to its operating status, if any. Unitel Video, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UTLV.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of UniverCell Holdings, Inc. because questions have arisen as to its operating status, if any. UniverCell Holdings, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UVCL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Universal Automotive Industries, Inc. because questions have arisen as to its operating status, if any. Universal Automotive Industries, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''UVSLQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Value Added Communications, Inc. because questions have arisen as to its operating status, if any. Value Added Communications, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VACI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VECTRA Technologies, Inc. because questions have arisen as to its operating status, if any. VECTRA Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VCTRQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VIA NET.WORKS, Inc. because questions have arisen as to its operating status, if any. VIA NET.WORKS, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VNWI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vie Financial Group, Inc. because questions have arisen as to its operating status, if any. Vie Financial Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VIFI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Viral Response Systems, Inc. because questions have arisen as to its operating status, if any. Viral Response Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VRSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Viseon, Inc. because questions have arisen as to its operating status, if any. Viseon, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VSNI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Visicom International, Inc. because questions have arisen as to its operating status, if any. Visicom International, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VSCM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vision Technology Corp. because questions have arisen as to its operating status, if any. Vision Technology Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VSTCQ.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vision Twenty-One, Inc. because questions have arisen as to its operating status, if any. Vision Twenty-One, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''EYES.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vistula Communications Services, Inc. because questions have arisen as to its operating status, if any. Vistula Communications Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VSTL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VR Business Brokers, Inc. because questions have arisen as to its operating status, if any. VR Business Brokers, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''VRBB.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Washtenaw Group, Inc. (The) because questions have arisen as to its operating status, if any. Washtenaw Group, Inc. (The) is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''TWHR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Watchit Media, Inc. because questions have arisen as to its operating status, if any. Watchit Media, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WMDA.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wavex International Inc. because questions have arisen as to its operating status, if any. Wavex International Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WVXI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wayne's Famous Phillies, Inc. because questions have arisen as to its operating status, if any. Wayne's Famous Phillies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WFPI.''

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of West Coast Entertainment Corp. because questions have arisen as to its operating status, if any. West Coast Entertainment Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WCEC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Westbury Metals Group, Inc. because questions have arisen as to its operating status, if any. Westbury Metals Group, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WMET.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wilshire Technologies, Inc. because questions have arisen as to its operating status, if any. Wilshire Technologies, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WILK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Winfield Capital Corp. because questions have arisen as to its operating status, if any. Winfield Capital Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WCAP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wismer-Martin, Inc. because questions have arisen as to its operating status, if any. Wismer-Martin, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WSMM.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Womens Golf Unlimited, Inc. because questions have arisen as to its operating status, if any. Womens Golf Unlimited, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WGLF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Woodroast Systems, Inc. because questions have arisen as to its operating status, if any. Woodroast Systems, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WRSI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WorldModal Network Services, Inc. because questions have arisen as to its operating status, if any. WorldModal Network Services, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WMDL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Data, Inc. because questions have arisen as to its operating status, if any. Worldwide Data, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WWDI.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wright (G.F.) Steel & Wire Co. because questions have arisen as to its operating status, if any. Wright (G.F.) Steel & Wire Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WRGFP.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wright (G.F.) Steel & Wire Co. because questions have arisen as to its operating status, if any. Wright (G.F.) Steel & Wire Co. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WRGF.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wright Brothers Energy, Inc. because questions have arisen as to its operating status, if any. Wright Brothers Energy, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''WOIL.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of XI Tec, Inc. because questions have arisen as to its operating status, if any. XI Tec, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''XTIC.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xpedior, Inc. because questions have arisen as to its operating status, if any. Xpedior, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''XPDR.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of York Research Corp. because questions have arisen as to its operating status, if any. York Research Corp. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''YORK.''

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ZeroPlus.com, Inc. because questions have arisen as to its operating status, if any. ZeroPlus.com, Inc. is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol ''ZPLSQ.''

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

*Therefore, it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 14, 2012 through 11:59 p.m. EDT on May 25, 2012.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2012–11962 Filed 5–14–12; 4:15 pm]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66965; File No. SR–NYSEARCA–2012–38]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's ''Other Securities'' Listing Standard, To Delete a Provision Providing That If a Security Listed Under the Rule Contains Redemption Provisions, the Redemption Price Must Be at Least $3.00 Per Unit

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 30, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's ''Other Securities'' listing standard, to delete a provision providing that if a security listed under the rule contains redemption provisions the redemption price must be at least $3.00 per unit. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's initial listing standard for ''Other Securities,'' [3] as set forth below. Under NYSE Arca Equities Rule 5.2(j)(1), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, warrants, contingent value rights, and unit investment trusts.[4] The Exchange, like certain other national securities exchanges, refers to such securities as ''Other Securities.'' [5] In addition, NYSE Arca Equities Rule 5.2(j)(4) (''Index-linked Exchangeable Notes'') and NYSE Arca Equities Rule 5.2(j)(6) (''Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities'') (securities listed under any of these rules and securities listed under NYSE Arca Equities Rule 5.2(j)(1) shall be referred to herein as ''hybrid securities'') require that, in the case of securities listed under those rules, both the issue and the issuer must comply with the requirements of NYSE Arca Equities Rule 5.2(j)(1), except to the extent that those rules explicitly provide otherwise.

The Exchange amended its initial and continued listing standards for operating companies on a pilot program basis in 2006 (the ''Pilot Program'') and subsequently extended that Pilot Program three times.[6] The Pilot Program also made minor changes to a number of other rules, including NYSE Arca Equities Rule 5.2(j)(1), which was amended to (i) add a pre-tax income initial listing requirement of $1,000,000 and (ii) to make some minor non-substantive stylistic changes. The Exchange amended rules included in the Pilot Program on several occasions while the Pilot Program was operational, including by means of a rule filing approved by the SEC in which the Exchange deleted NYSE Arca Equities Rule 5.2(j)(1)(E), which provided that the redemption price must be at least $3.00 per unit for those issues that contain redemption provisions.[7]

The third and final extension of the Pilot Program expired on November 30, 2008. After the final extension of the Pilot Program in 2008, NYSE Euronext, the ultimate parent company of NYSE Arca decided to discontinue initial listing of equity securities of operating companies on NYSE Arca. The listing standards adopted under the Pilot Program, as amended, were not adopted on a permanent basis prior to the expiration of the Pilot Program because of that decision.

The Exchange now proposes to amend its rules to delete NYSE Arca Equities Rule 5.2(j)(1)(E), which provides that the redemption price must be at least $3.00 per unit for those issues that contain redemption provisions. The Exchange proposes to delete this provision in order to bring the NYSE Arca Equities rule in line with those of other exchanges and, therefore, to remain competitive in the marketplace.[8] The Exchange notes that, while it does not at this time list any securities under NYSE Arca Equities Rule 5.2(j)(1), NYSE Arca Rule 5.2(j)(4) and NYSE Arca Equities Rule 5.2(j)(6) both incorporate certain requirements from NYSE Arca Equities Rule 5.2(j)(1), including those the Exchange proposes to delete pursuant to this filing. As the Exchange continues to regularly list securities under NYSE Arca Equities 5.2(j)(6), the proposed amendment has significant implications for the Exchange's competitive position.

When the Exchange first adopted its ''Other Securities'' listing standard in 1994, it adopted a standard that was the same in all material respects as the standard adopted by the American Stock Exchange (''Amex'') (predecessor to NYSE Amex) in 1990. At the time that the Amex adopted its ''Other Securities'' standard, the market for exchange-traded hybrid securities was in its infancy. The Exchange understands that there was a concern that investors did not have a sophisticated enough understanding of how hybrid securities performed and it was believed that it was therefore necessary to protect investors against the possibility that they could lose most or all of their investment in a hybrid security. Consequently, the Amex (and,

[3] *See* Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR–PSE–93–12) (approving, among other things, the initial listing standards for ''Other Securities'' of the Pacific Stock Exchange (''PCX''), the predecessor entity to NYSE Arca).

[4] NYSE Arca Equities Rule 5.2(j)(1) currently states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rules 5.2(c) through (h). *See* NYSE Arca Equities Rule 5.2(j)(1); see, e.g., NYSE Arca Equities Rules 5.2(c) (listing criteria for common stock); 5.2(d) (listing criteria for preferred stock and similar issues and secondary classes of common stock; 5.2(e) (listing criteria for bonds and debentures); 5.2(f) (listing criteria for warrants); 5.2(g) (listing criteria for contingent value rights); and 5.2(h) (listing criteria for unit investment trusts).

[5] NYSE Amex's initial listing standards for ''Other Securities'' are set forth in Section 107A of the NYSE Amex Company Guide. *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29) (approving the initial listing criteria for ''Other Securities'').

[6] The Commission initially approved the Pilot Program for six months, until May 29, 2007. *See* Securities Exchange Act Release No. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR–NYSEArca–2006–85). The Pilot was subsequently extended for an additional six months, until November 30, 2007. *See* Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR–NYSEArca–2007–51). The Pilot was then extended for an additional six months, until May 31, 2008. *See* Securities Exchange Act Release No. 56885 (December 3, 2007), 72 FR 69272 (December 7, 2007) (SR–NYSEArca–2007–123). The Pilot was finally extended for an additional six months, until November 30, 2008. *See* Securities Exchange Act Release No. 57922 (June 4, 2008), 73 FR 33137 (June 11, 2008) (SR–NYSEArca–2008–55).

[7] *See* Securities Exchange Act Release No. 56906 (December 5, 2007), 72 FR 70636 (December 12, 2007) (SR–NYSEArca–2007–103).

[8] *See* Securities Exchange Act Release No. 37165 (May 3, 1996), 61 FR 21215 (May 9, 1996) (SR–Amex–96–15) (eliminating the U.S. dollar cash settlement and minimum redemption price requirements for ''Hybrid Securities'' in Section 107A of the NYSE Amex Company Guide).

following the Amex's lead, the PCX) adopted a requirement that the issuer of a mandatorily redeemable security could not redeem such security at a price of less than $3.00. This provision provided downside protection to investors and ensured that they would not unknowingly purchase a security that would ultimately have little or no intrinsic value. The NYSE never adopted such a requirement and the Amex deleted this provision from its own rule in 1996 to conform to the ''Other Securities'' rule of the NYSE.

The Exchange believes that a minimum redemption price requirement may provide a desirable protection for investors in the case of certain hybrid securities. In that regard, the Exchange notes that after adoption of the proposed amendment issuers would still have the ability to include a minimum redemption price provision in their securities when doing so is desirable. However, the Exchange notes that requiring a minimum redemption price of $3.00 deprives investors of the ability to make the sort of investment choices that an investor can make when an equity security declines in value, as it essentially forces the issuer to redeem the securities as soon as possible after they fall below that price, as the issuer would otherwise be at risk of having to redeem the securities at a premium. In the absence of this automatic redemption, investors would have greater flexibility in that they would be able to choose either to continue to hold a security whose value had significantly declined (on the basis that its value might recover) or sell the security to avoid further losses. By contrast, the current requirement would force investors to realize the loss associated with the difference between their purchase price and the $3.00 redemption price. The Exchange also notes that exchange-traded hybrid securities now typically provide for the possibility of redemption of large blocks of the securities at the option of the investor at regular intervals. As such, an investor who owns a significant amount of the securities and who is concerned about the trend in the value of the reference asset for a hybrid security and its implications for the future value of the hybrid security itself is able to require the issuer to redeem his securities, thereby limiting his exposure to future declines in the value of the hybrid security. Finally, the Exchange notes that the ''Other Securities'' standards of other national securities exchanges, including the NYSE, NYSE Amex and Nasdaq, do not include mandatory redemption provisions.

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section *6(b)*[9] *of the Securities Exchange Act of 1934 (the ''Act''),*[10] *in general, and furthers* the objectives of Section 6(b)(5) of the Act,[11] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Specifically, the proposed amendment is consistent with the protection of investors and the public interest because (i) if the automatic redemption requirement was no longer applicable, investors would have greater flexibility in that they would be able to choose either to continue to hold a security whose value had significantly declined (on the basis that its value might recover) or sell the security to limit their losses and (ii) issuers will still have the ability to include a minimum redemption price provision in their securities when doing so is desirable. In addition, the proposed amendment is designed to remove an impediment to a free and open market in that it would remove a requirement which is not included in the comparable rules of competitor exchanges and would therefore promote competition.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4 thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

## 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–NYSEArca–2012–38 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–38. 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

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78a.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4. 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.

[14] 15 U.S.C. 78s(b)(3)(C).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–38 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11913 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66966; File No. SR–NYSEArca–2012–37]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing a Pilot Program To Create a Lead Market Maker Issuer Incentive Program for Issuers of Certain Exchange-Traded Products Listed on NYSE Arca, Inc.

May 11, 2012.

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 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a pilot program to create a Lead Market Maker (''LMM'') Issuer Incentive Program (''Fixed Incentive Program'') for issuers of certain exchange-traded products (''ETPs'') listed on the Exchange. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* the Commission's Public Reference Room, and the Commission's Web site at *www.sec.gov.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes a pilot program to create a Fixed Incentive Program for issuers of certain ETPs listed on the Exchange.

Background

Under the current Fee Schedule for listings, an issuer of an ETP is required to pay a Listing Fee that ranges from $5,000 to $45,000.[3] ETP issuers also pay a graduated Annual Fee based on the number of shares of the ETP that are outstanding. The Annual Fee ranges from $5,000 to $55,000.

A qualified Market Maker may request an assignment as an LMM for an ETP, and the request is subject to approval by the Exchange.[4] For some ETPs, no Market Maker requests an assignment as an LMM, and the ETP therefore trades without an LMM assigned to it. The Exchange operates under the price-time priority model for all market participants, so there is no distinct transactional benefit to being assigned as an LMM. However, LMMs are obligated to meet certain obligations and requirements[5] and therefore incur greater risks than other market participants on the Exchange. The risks include those associated with managing position inventory as well as those associated with maintaining quotes. Inventory risks may be higher for certain ETPs with low volume and low shares outstanding because there are fewer opportunities to turn over positions in such ETPs and the accumulation of costs from carrying those positions as well as positions in the underlying securities used for hedging.[6] LMMs are required to continuously quote on both sides of the market; therefore, they must be willing to buy as well as sell by posting displayed and firm quotes on the Exchange. When there is a low volume of shares outstanding, there is often less supply for securities lending purposes. In order to meet settlement requirements established by Regulation SHO,[7] LMMs acting in ETPs with low shares outstanding are often required to maintain a long ETP position. Quoting risks exist due to the complexity of pricing ETPs and the potential for human and/or technological errors. ETPs are open-ended and derivatively priced securities that typically track returns of underlying assets. If, due to human error such as the input of an inaccurate underlying basket or technological error such as a static data

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange has one Schedule of Fees and Charges for Exchange Services that is for listings (''Listing Fee Schedule'') and another that is for trade-related charges (''Trading Fee Schedule''). To differentiate them, the Exchange proposes to change the name of the former to ''SCHEDULE OF FEES AND CHARGES FOR EXCHANGE LISTING SERVICES.'' ETPs are generally classified as either Derivative Securities Products or Structured Products for purposes of the Listing Fee Schedule. *See* Listing Fee Schedule, available at *http://www.nyse.com/pdfs/NYSEArca_Listing_Fees.pdf.*

[4] *See* NYSE Arca Equities Rule 7.22(d).

[5] An LMM is subject to the obligations for Market Makers that are set forth in NYSE Arca Equities Rule 7.23 and the minimum performance standards that are referenced in NYSE Arca Equities Rule 7.24. Under NYSE Arca Equities Rule 7.24, the minimum performance standards include (i) percent of time at the National Best Bid or Offer (''NBBO''), (ii) percent of executions better than the NBBO, (iii) average displayed size, (iv) average quoted spread, and (v) in the event the security is a derivative security, the ability to transact in underlying markets. An LMM's minimum performance standards are higher than those of a Designated Market Maker and are described in an official NYSE Arca policy titled *NYSE Arca LMM Requirements,* which may be amended from time to time. The minimum performance standards are measured daily and reviewed as a monthly average. The Exchange believes that they are stringent and help foster liquidity provision and stability in the market. References in this rule filing, including in the proposed rule text, to an LMM's minimum performance standards mean those set forth in *NYSE Arca LMM Requirements.*

[6] Costs of carrying ETP inventories include the expense ratio, which includes the management fee, financing costs or the cost of capital, and the opportunity cost of allocating capital. At times it may also include stock loan costs for maintaining a hedge in hard-to-borrow securities.

[7] *See* 17 CFR 242.203–204.

feed caused by networking or hardware breakdowns, the LMM's quote diverges from the underlying assets value, the LMMs are more likely to buy (sell) at prices that are above (below) theoretical fair values. Because LMMs are required to continuously quote on both sides of the market and maintain certain minimum performance standards, they are more likely to face these types of risks because other market participants have more freedom to withdraw quotes upon experiencing difficulties or unusual market conditions.

To incentivize firms to take on the LMM designation and foster liquidity provision and stability in the market, the Exchange currently provides LMMs with an opportunity to receive incrementally higher transaction credits and incur incrementally lower transaction fees (''LMM Rates'') compared to standard liquidity maker-taker rates (''Standard Rates'').[8] LMM Rates are intended to balance the increased risks and requirements assumed by LMMs. Accordingly, the value of acting as an LMM could be measured by the incremental difference in the transaction credits or fees under the LMM Rates as compared to the Standard Rates. However, the absolute incremental difference depends on the LMM's volume traded. Trading volume for different ETPs can vary significantly and result in a corresponding variance in LMM trading volume. The benefit of acting as an LMM can therefore vary significantly depending upon the ETP to which the LMM is assigned. There are fewer financial benefits for LMM assignments in ETPs with lower CADV than ETPs with higher CADV. The table below provides hypothetical examples based on assumptions that NYSE Arca market share equals 22%, LMM participation rate equals 20%, LMM make ratio equals 80%, and LMM take ratio equals 20%:[9]

| Symbol | CADV | Annual transaction credit/fee (LMM rates) | Annual transaction credit/fee (standard rates) | Annual incremental difference |
|---|---|---|---|---|
| ABC | 25,000,000 | $637,560 | $332,640 | $304,920 |
| DEF | 5,100,000 | 130,062 | 67,859 | 62,204 |
| GHI | 2,500,000 | 74,844 | 33,264 | 41,580 |
| JKL | 1,100,000 | 32,931 | 14,636 | 18,295 |
| MNO | 750,000 | 25,780 | 9,979 | 15,800 |
| PQR | 500,000 | 17,186 | 6,653 | 10,534 |
| STU | 100,000 | 3,437 | 1,331 | 2,107 |
| VWX | 10,000 | 344 | 133 | 211 |
| YZ | 1,000 | 34 | 13 | 21 |

The Exchange believes that the assignment of an LMM, which is held to higher standards as compared to Market Makers and other market participants, is a critical component of the promotion of a consistent, fair and orderly market in ETPs on the Exchange. However, market participants may be forgoing LMM assignments in ETPs—instead choosing to trade ETPs as Market Makers or ETP Holders with lower or no obligations or minimum performance standards—because the incentives to serve as an LMM are insufficient to outweigh the obligations, minimum performance standards, and other risks described above. To illustrate how this change has transpired, the following table highlights the increasing proportion of new NYSE Arca ETPs that are listed without an LMM present:

| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
|---|---|---|---|---|---|---|---|---|---|
| New NYSE Arca ETP Listings | 11 | 34 | 49 | 133 | 223 | 195 | 124 | 196 | 297 |
| Listed with LMM | 11 | 34 | 49 | 133 | 218 | 190 | 121 | 175 | 271 |
| Listed without LMM | 0 | 0 | 0 | 0 | 5 | 5 | 3 | 21 | 26 |

Since January 2008, nearly 100% of all LMM withdrawal requests for ETPs already listed and trading were made for securities that exhibited low CADV in the period prior to the withdrawal request being made. This behavior signals a connection between low CADV and low interest levels from firms seeking to act as the LMM. Likewise, it supports the assertion that there is less value relative to risks of acting as the LMM for certain ETPs.

Proposed Fixed Incentive Program

The Exchange proposes to add new NYSE Arca Equities Rule 8.800, which would offer a pilot program to incentivize Market Makers to undertake LMM assignments in ETPs. An issuer of an ETP that participates in the proposed Fixed Incentive Program would continue to pay the currently applicable Listing and Annual Fees. Such issuer also could elect to pay the Exchange an Optional Incentive Fee, which would range from $10,000 to $40,000 per year.[10]

Proposed NYSE Arca Equities Rule 8.800(a) would describe the ETPs that would be eligible for inclusion in the

[8] The Exchange generally employs a maker-taker transactional fee structure, whereby an ETP Holder that removes liquidity is charged a fee (''Take Rate''), and an Equity Trading Permit Holder (''ETP Holder'') that provides liquidity receives a credit (''Make Rate''). The Take Rate for LMMs is currently $0.0025 per share. The Make Rate for LMMs is currently between $0.0035 and $0.0045 per share depending on consolidated average daily volume (''CADV''). Standard NYSE Arca Tape B Make Rates (rebates paid for adding liquidity) range from $0.0022 to $0.0033 per share. Standard NYSE Arca Tape B Take Rates (fees charged for removing liquidity) range from $0.0026 to $0.0030 per share. *See* the Trading Fee Schedule, available at *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__3_01_12_.pdf.*

[9] Market share is the percentage of CADV traded on NYSE Arca. Participation rate is the percentage of NYSE Arca volume traded by the LMM. Make ratio is the percentage of LMM volume that provides liquidity. Take ratio is the percentage of LMM volume that takes liquidity. The formula for calculating the transaction credit is as follows: (LMM make volume * Make Rate) + (LMM take volume * Take Rate). LMM make volume equals CADV * NYSE Arca market share * LMM participation rate * LMM make ratio. LMM take volume equals CADV * NYSE Arca market share * LMM participation rate * LMM take ratio.

[10] The Exchange would provide notification on its Web site regarding the ETPs participating in the Fixed Incentive Program and the assigned LMMs.

Fixed Incentive Program. Eligible products would include any ETP that is listed on the Exchange as of the commencement of the pilot period or that becomes listed during the pilot period, and the listing is under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

Proposed NYSE Arca Equities Rule 8.800(b)(1) would describe the issuer's application process. An issuer that wishes to have an ETP participate in the Fixed Incentive Program and pay the Exchange an Optional Incentive Fee would be required to submit a written application in a form prescribed by the Exchange for each ETP. The issuer could elect to participate at the time of listing or thereafter at the beginning of each quarter during the pilot period. An issuer could not have more than five existing ETPs, that are listed on the Exchange prior to pilot [sic], participate in the Fixed Incentive Program. The Exchange would communicate the ETP(s) proposed for inclusion in the Fixed Incentive Program on a written solicitation that would be sent to all qualified LMM firms [11] along with the Optional Incentive Fee the issuer proposes to pay the Exchange for each ETP. The permitted range for the Optional Incentive Fee would be set forth in the Exchange's Fee Schedule. The issuer and the LMM thereafter would agree upon the final Optional Incentive Fee for each ETP. If more than one qualified LMM proposed to serve as such, the issuer would choose the LMM.

Proposed NYSE Arca Equities Rule 8.800(b)(2) would set forth eligibility requirements for issuers' participation in the Fixed Incentive Program. To be eligible to participate in the Fixed Incentive Program, an issuer would be required to be current in all payments due to the Exchange if it had other securities listed on the Exchange. In addition, the issuer would be required to be current in all payments due to the Exchange and compliant with continuing listing standards for the ETP proposed for inclusion if the issuer elected to participate in the Fixed Incentive Program after listing such ETP on the Exchange.

Proposed NYSE Arca Equities Rule 8.800(c) would describe the process for the payment of the Optional Incentive Fee for each ETP. The Optional Incentive Fee would be paid by the issuer to the Exchange in quarterly installments for each participating ETP at the beginning of each quarter and prorated if the issuer commences participation for an ETP in the Fixed Incentive Program after the beginning of a quarter. The issuer would receive a prorated credit from the Exchange following the end of the quarter if the LMM did not meet its minimum performance standards for an ETP in any given month in such quarter. The credit would be applied against the issuer's next quarterly installment of the Optional Incentive Fee for the ETP, or otherwise credited or refunded to the issuer if the ETP was withdrawn from the Fixed Incentive Program. If an issuer did not pay its quarterly installments to the Exchange on time and the ETP continued to be listed, the Exchange would continue to credit the LMM as described in proposed Rule 8.800(d) below, except that after two quarters, if an issuer was not current in its quarterly installments for an ETP, such ETP would be automatically terminated from the Fixed Incentive Program.

Proposed NYSE Arca Equities Rule 8.800(d) would describe the LMM Payments by the Exchange. Under this provision, the Exchange would credit an LMM for the LMM Payment, which would be equal to the Optional Incentive Fee paid by the issuer, less an Exchange administration fee set forth in the Fee Schedule.[12] An LMM that receives an LMM Payment would not be eligible for LMM Rates for such ETP under the Exchange's Fee Schedule while participating in the Fixed Incentive Program but would instead be subject to Standard Rates.[13]

The Exchange would credit an LMM for the LMM Payment at the end of each quarter. If an LMM did not meet or exceed its minimum performance standards for the ETP for a particular month, then the LMM Payment would be prorated accordingly. As noted above, the issuer in turn would receive a prorated credit that could be used toward the following quarterly LMM Payment for that particular ETP or others that they have elected to participate in the Fixed Incentive Program. As is the case with all liquidity-adding credits currently payable to NYSE Arca members, LMM Payments would be paid directly by the Exchange from its general revenues.

Proposed NYSE Arca Equities Rule 8.800(e) would describe the circumstances for withdrawal from the Fixed Incentive Program and a reallocation process. If an ETP no longer met continuing listing standards or is being liquidated, it would be automatically withdrawn from the Fixed Incentive Program as of the ETP suspension date. In addition, NYSE Arca, in its discretion, could allow an issuer to withdraw an ETP from the Fixed Incentive Program before the end of the pilot if the assigned LMM was unable to meet its minimum performance standards for any two of the three months of a quarter or five months during the pilot and no other qualified ETP Holder was able to take over the assignment.

An LMM also could withdraw from all of its ETP assignments in the Fixed Incentive Program. Alternatively, NYSE Arca, in its discretion, could allow an LMM to withdraw from a particular ETP before the end of the pilot period if the Exchange determined that there were extraneous circumstances that prevented the LMM from meeting its minimum performance standards for such ETP that did not affect its other ETP assignments in the Fixed Incentive Program. In either such event, the LMM's ETP(s) would be reallocated as described below.

If an LMM, for a particular ETP, did not meet or exceed its minimum performance standards for any two of the three months of a quarter or five months during the pilot, or chose to withdraw from the Fixed Incentive Program, and at least one other qualified Market Maker agreed to become the assigned LMM under the Fixed Incentive Program, then the ETP would be reallocated via the written solicitation process described above. The issuer could select another LMM and renegotiate the Optional Incentive Fee. The reallocation process would be completed no sooner than the end of the current quarter and no later than the end of the following quarter.

The proposed LMM Payment is designed to encourage additional Market Makers to pursue LMM assignments and thereby support the

[11] The written solicitation would be included in the Green Sheet, which is the common term for an email communication sent by NYSE Arca staff members to all qualified LMMs prior to an LMM selection. The Green Sheet includes, among other things, the name, symbol, and description of the ETP(s) as well as the name of the issuer and a link to the ETP prospectus. A qualified LMM must complete the application for a specific ETP or group of ETPs.

[12] As noted below, the Exchange proposes that the initial administration fee be 5%.

[13] *See supra* note 8.

provision of consistent liquidity in ETPs listed on the Exchange. The Exchange would administer all aspects of the LMM Payments and believes that providing a quarterly LMM Payment would create a more equitable system of incentives for LMMs. The Exchange notes that the proposal would not alter the current requirements and obligations of LMMs under Exchange rules or any policies and procedures related to LMMs.[14]

Implementation of Fixed Incentive Program

The pilot program would be offered to issuers from the date of implementation, which would occur no later than 90 days after the effective date of this filing, until December 31, 2013. As referenced above, each issuer could select ETPs to participate in the Fixed Incentive Program. During the course of the pilot period, the Exchange would assess the Fixed Incentive Program and may expand the criteria for ETPs that are eligible to participate for example, to permit issuers to include more than five ETPs that were listed on the Exchange before the pilot. At the end of the pilot, the Exchange would determine whether to continue or discontinue the pilot or make it permanent and submit a rule filing as necessary. If the Exchange determines to change the terms of the pilot while it is ongoing, it would submit a rule filing to the Commission.

During the pilot program, the Exchange would provide the Commission with certain market quality data on a confidential basis each month. Such data would include, for all ETPs listed as of the date of implementation of the pilot program and listed during the pilot (for comparative purposes), volume (CADV and NYSE Arca ADV), NBBO bid/ask spread differentials, LMM participation rates, NYSE Arca market share, LMM time spent at the inside, LMM time spent within $0.03 of the inside, percent of time NYSE Arca has the best price with the best size, LMM quoted spread, LMM quoted depth, and Rule 605 statistics (one-month delay) as agreed upon by the Exchange and the Commission staff. In connection with this proposal, the Exchange would provide such data as may be periodically requested by the Commission.

Amendments to Listing Fee Schedule and Trading Fee Schedule

To implement the pilot, the Exchange also proposes to amend its Listing Fee Schedule to provide that the Optional Incentive Fee under NYSE Arca Rule 8.800 may range from $10,000 to $40,000 and to amend its Trading Fee Schedule to provide that at the end of each quarter, the Exchange would credit the LMM assigned to an ETP the Optional Incentive Fee, less a 5% Exchange administration fee, and that an LMM that receives an LMM Payment under NYSE Arca Rule 8.800 would be subject to Standard Rates rather than LMM Rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular.

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and that it is not unfairly discriminatory. The Exchange believes that the proposed Optional Incentive Fees for ETPs are reasonable, given the additional costs to the Exchange of providing the LMM Payment. The Exchange also believes that the proposed fees are reasonable because they would be used by the Exchange to offset, in part, the cost that the Exchange incurs to provide listing services for ETPs. These costs include, but are not limited to, ETP rulemaking initiatives, listing administration processes, issuer services, consultative legal services provided to ETP issuers in support of new product development, and administration of the proposed quarterly LMM Payment.

The Exchange believes that the Optional Incentive Fee is reasonable, equitably allocated, and not unreasonably discriminatory. The fee would be equitably allocated and not unfairly discriminatory because it is entirely voluntary on the issuer's part to join the pilot program. The amount of the fee would be determined and paid by the issuer within the $10,000 to $40,000 band per ETP.

The Exchange believes that the LMM Payment and standard transaction fees and credits are equitable in that any LMM could seek to participate in the program. The Exchange further believes that the range of credits is fair and equitable in light of the LMM's obligations and minimum performance standards and that it is reasonable for the Exchange to retain an administration fee to recover the costs of administering the pilot program.

The Exchange further believes that the proposed rule change is consistent with Section 6(b)(5) of the Act 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that creating an incentive for an ETP Holder to act as an LMM would foster cooperation and coordination with persons engaged in facilitating securities transactions and enhance the mechanism of a free and open market. The assignment of an LMM, which is held to higher minimum performance standards as compared to other market participants, helps to promote fair and orderly markets in ETPs on the Exchange.

The Exchange believes that its implementation plan and the pilot period are reasonable in that they would permit the Commission, the Exchange, LMMs, and issuers to assess the impact of the Fixed Incentive Program before making it available to all ETPs. In particular, the Exchange believes that it is beneficial and not unfairly discriminatory to limit the ETPs participating so that the Exchange and issuers could measure the experience against non-participating ETPs and thereby conserve the commitment of resources to the pilot program.

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the ETPs participating in the pilot program, which the Exchange believes are adequate to properly monitor Exchange trading of the participating ETPs in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

Finally, the Exchange believes that the pilot program would not be inconsistent with Financial Industry Regulatory Authority (''FINRA'') Rule 5250, which prohibits payment for market making. The Exchange believes that FINRA Rule 5250 is designed to address issues associated with securities of operating companies, and such issues are not present with ETPs, which have derivative pricing, creation and/or redemption features, or upsizing that would preclude the type of manipulation that FINRA Rule 5250 is designed to prevent. Moreover, the Exchange believes that the structure of

[14] *See supra* note 5.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

its proposal is unique and has appropriate safeguards. For example, the proposal includes the interposition of the Exchange between the issuers and LMMs, the payment of fees from the general revenues of the Exchange, and the existing obligations and minimum performance standards that are monitored by the Exchange under NYSE Arca Equities Rules 7.23 and 7.24, respectively. For these reasons, the Exchange does not believe that its proposal would be inconsistent with FINRA Rule 5250.[17]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve or disapprove the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission requests comment, in particular, on the following aspects of the proposed rule change:

1. The Exchange asserts that LMMs in ETPs incur higher inventory, quoting, and other risks than other market participants on the Exchange and that there is less value relative to risk of acting as an LMM for ETPs that exhibit low CADV. Do commenters agree that low interest levels by LMMs in ETPs that have low CADV is a result of such value/risk discrepancy? Why or why not? What other factors could contribute to a lack of interest by LMMs in such ETPs? What other factors could explain the apparent increasing proportion of new ETPs that are listed on the Exchange without a designated LMM?

2. The Exchange asserts that providing a quarterly LMM Payment to LMMs assigned to ETPs in the Fixed Incentive Program will create a more equitable system of incentives for LMMs. Do commenters believe that the Fixed Incentive Program will incentivize more LMMs to take assignments in ETPs. If so, how? If not, why not?

3. Given the inherent arbitrage link between trading ETPs and their underlying holdings, would a lack of liquidity in an ETP impact the ability of LMMs to quote relatively narrow bids and offers? What, if anything, does a lack of liquidity in an ETP indicate about the ability of an LMM or other market maker to make effective use of arbitrage and the creation/redemption mechanisms often associated with ETPs? How, if at all, would a market-making incentive program affect any intraday premium (discount) of the traded price of an ETP above (below) its intraday indicative value?

4. The Exchange states that the Fixed Incentive Program is designed to encourage additional Market Makers to pursue LMM assignments and thereby support the provision of consistent liquidity in ETPs listed on the Exchange. The Commission seeks specific commentary on any potential impact of the proposed rules on the market quality of ETPs. Do commenters agree with the Exchange that the Fixed Incentive Program would support the provision of consistent liquidity in ETPs listed on the Exchange? If so, please explain. If not, why not?

5. If two ETPs share similar market quality characteristics (quoted spread, size, volume, etc.) but one is supported by the Fixed Incentive Program and the other is not, what, if anything, does that suggest about the fundamental market qualities of the two ETPs? Would investors understand, and should they be concerned about, the differences underlying the seemingly similar market qualities of the two ETPs? Are there other aspects of this type of incentivized market quality that should concern investors? Are such apparent improvements in market quality consistent with the Act and investor protection? Why or why not?

6. Under the proposal, LMMs for ETPs in the Fixed Incentive Program would continue to be subject to the current LMM performance standards and would not be subject to higher performance standards. Do commenters believe this is appropriate? Why or why not? Should LMMs for ETPs in the Fixed Incentive Program be subject to higher standards because of the LMM Payments that LMMs could be entitled to receive? Why or why not?

7. FINRA Rule 5250 prohibits FINRA members from directly or indirectly accepting payment from an issuer of a security for acting as a market maker. The Exchange asserts that FINRA Rule 5250 is designed to address issues associated with securities of operating companies, and such issues are not present with ETPs, because they have derivative pricing, creation and/or redemption features, or upsizing that would preclude the type of manipulation that FINRA Rule 5250 is designed to prevent. Do commenters agree with this assertion? If so, why? If not, why not?

8. The Exchange notes in its filing that it expects FINRA to file a proposed rule change to amend its Rule 5250 to indicate that participation by LMMs and issuers in the Fixed Incentive Program would not be prohibited by FINRA Rule 5250. FINRA Rule 5250 (previously NASD Rule 2460) was implemented, in part, to address concerns about issuers paying market makers to improperly influence the price of an issuer's stock.[18] Do commenters believe the Fixed Incentive Program would raise the types of concerns that FINRA Rule 5250

[17] Notwithstanding the Exchange's views, and based upon discussions with FINRA, subsequent to the Exchange's filing of this proposal FINRA will file an immediately effective rule change indicating that participation by LMMs and issuers in the Fixed Incentive Program would not be prohibited by FINRA Rule 5250.

[18] *See* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR–NASD–97–29) (''Specifically, the Commission finds that the rule preserves the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security. The decision by a firm to make a market in a given security and the question of price generally are dependent on a number of factors, including, among others, supply and demand, the firm's expectations toward the market, its current inventory position, and exposure to risk and competition. This decision should not be influenced by payments to the member from issuers or promoters. Public investors expect broker-dealers' quotations to be based on the factors described above. If payments to broker-dealers by promoters and issuers were permitted, investors would not be able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters. This structure would harm investor confidence in the overall integrity of the marketplace. The Commission finds that the proposed rule supports a longstanding policy and position of the NASD and establishes a clear standard of fair practice for member firms.'')

was designed to address? Why or why not?

9. The Exchange asserts that the structure of its proposal is unique and has appropriate safeguards to dispel the concerns that FINRA Rule 5250 was designed to address. For example, the Exchange notes that the proposal includes the interposition of the Exchange between the issuers and LMMs, the payment of fees from the general revenues of the Exchange, and the existing obligations and minimum performance standards that are monitored by the Exchange under NYSE Arca Equities Rules 7.23 and 7.24, respectively. Do commenters agree that the Exchange's proposal adequately addresses the policies and concerns behind FINRA Rule 5250? Why or why not? What are commenters' views on whether, and if so, how, the Fixed Incentive Program would be consistent with the rationale behind FINRA Rule 5250?

10. Could there be conflicts of interest between an issuer of an ETP in the Fixed Incentive Program and the LMM assigned to such ETP? If so, what are those conflicts of interest? [19] Please explain whether the Exchange's proposal adequately addresses such potential conflicts, and if so, how, and if not, why not.

11. Are the proposed criteria for participation by potential ETP issuers and/or LMMs in the Fixed Incentive Program sufficiently clear, precise, and objective to address concerns about potential conflicts of interest between issuers and market makers? Why or why not? Should such participation standards be more objective to ensure that there is a level playing field in determining who the issuers and market makers are for a particular ETP in the Fixed Incentive Program? Would more clear and objective standards help to address conflicts of interest that may be present between issuers and market makers, if any? Under the proposed Fixed Incentive Program, if more than one qualified LMM proposes to serve as such, the issuer would choose the LMM. What are commenters' views on allowing the issuer that has chosen to participate in the Fixed Incentive Program to choose the LMM? Should the Exchange establish objective standards and be responsible for choosing the designated LMM for a particular issuer and ETP in the Fixed Incentive Program? Would allowing an issuer that has chosen to participate in the Fixed Incentive Program to choose its LMM for the particular ETP be consistent or inconsistent with the policies and concerns behind FINRA Rule 5250?

12. Is it appropriate and consistent with the Act to allow issuers to choose to enter into the Fixed Incentive Program and pay the Optional Incentive Fee? Why or why not? Would it be more or less appropriate to require all, or a fixed subset of, ETP issuers to enter the Fixed Incentive Program and pay the Optional Incentive Fee? What would be the impact on market maker incentives of allowing issuers to choose to enter into the Fixed Incentive Program and pay the Optional Incentive Fee?

13. Is it appropriate and consistent with the Act to allow issuers and LMMs to negotiate the Optional Incentive Fee? Why or why not? Does allowing issuers to negotiate such fees directly with LMMs raise concerns regarding investor confidence, market integrity, and member standards, similar to those discussed in connection with FINRA Rule 5250? [20] If so, what are those concerns? Should the Optional Incentive Fee agreed upon between the issuer and the LMM for a particular ETP be publicly disclosed? Why or why not?

14. With respect to an ETP, should the entity paying the Optional Incentive Fee be the sponsor or the fund? What impact, if any, would it have on fund investors if the fund pays the Optional Incentive Fee as opposed to the sponsor? Are the proposed rules sufficiently clear as to which entity will be paying the Optional Incentive Fee?

15. Section 11(d)(1) of the Act generally prohibits a firm that is both a broker and a dealer in securities from extending or maintaining any credit on any new issue security if the broker-dealer participated in the distribution of the new issue security within the preceding 30 days. The Commission has granted relief to authorized participants from these restrictions if, among other things, neither the broker-dealer authorized participant, nor any natural person associated with such broker-dealer authorized participant, directly or indirectly, receives from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2380. Should authorized participants participating in the creation and redemption of shares of ETPs that are also LMMs in those same ETPs be eligible to receive LMM Payments? Would the LMM Payments give these authorized participants economic incentives to promote or sell shares of the ETP? Should such payments be viewed by the Commission as coming directly or indirectly from the fund complex of the ETP? Should LMM Payments disqualify broker-dealer authorized participants from relying on the Commission's exemption from Section 11(d)(1) of the Act?

16. Could the Fixed Incentive Program have an impact (either positive or negative) on incentives for market making in other ETPs listed and traded on the Exchange that are not eligible for and/or do not participate in the Fixed Incentive Program, either because the Exchange has limited the number of ETPs that an issuer may have in the program, the issuer does not qualify for the program, or the issuer's application for participation is otherwise denied? If so, what type of impact, and why? If not, why not? Please explain.

17. The Exchange's stated rationale for the Fixed Incentive Program is that market makers need additional incentives to take on LMM assignments in ETPs with low CADV. However, the Fixed Incentive Program does not limit which ETPs can be included within the program based on trading volume, and does not provide for the removal or withdrawal of an ETP from the program if such ETP reaches a certain CADV level. Would it be more appropriate for an ETP to be removed from the Program once it reaches a certain liquidity level or volume threshold? Why or why not? If so, what would be an appropriate threshold? Would it be more appropriate to limit inclusion in the program to newly listed or low volume ETPs? Why or why not?

18. Could the Fixed Incentive Program have unintended consequences on fair and orderly markets in an ETP when such security leaves the program? If so, what could these consequences be? If not, why not? Please explain.

19. The Exchange has proposed to implement the Fixed Incentive Program on a pilot basis beginning no later than 90 days after the effective date of this filing, until December 31, 2013. Is this a reasonable amount of time to assess the impact of the proposed rules? If not, why not? Please explain.

[19] The Commission's order approving NASD Rule 2460 discussed conflicts of interest that may exist between issuers and market makers. *See id.* at 37106 (''It has been a longstanding policy and position of the NASD that a broker-dealer is prohibited from receiving compensation or other payments from an issuer for quoting, making a market in an issuer's securities or for covering the member's out-of-pocket expenses for making a market, or for submitting an application to make a market in an issuer's securities. As stated in Notice to Members 75–16 (February 20, 1975), such payments may be viewed as a conflict of interest since they may influence the member's decision as to whether to quote or make a market in a security and, thereafter, the prices that the member would quote.'')

[20] *See supra* note 18.

20. What additional data, if any, should be provided by the Exchange to help assess during the pilot period whether the Fixed Incentive Program is achieving its stated goals? For example, if the Exchange required ETPs to be listed and traded outside the Fixed Incentive Program for a period of time before being eligible for the program, could such a requirement provide useful ''before and after'' data for ETPs to permit the Exchange and the Commission to more accurately assess the market quality of the securities before participating in the program and the market quality of the same securities while participating in the program? If so, how? If not, please explain.

21. The Exchange represents that it will provide certain public disclosures relating to the Fixed Incentive Program (*i.e.,* notification on its Web site regarding the ETPs participating in the Fixed Incentive Program and the assigned LMMs). Do commenters believe that these disclosures would provide sufficient information to investors? If not, why not? Do commenters believe the program is sufficiently transparent? Why or why not? Is there any other information that the Exchange should provide on its Web site regarding the Fixed Incentive Program and participating ETPs, issuers, and LMMs? For example, should the Exchange be required to publish on its Web site any notices from an issuer or LMM to withdraw from the program, or notices that an issuer or LMM has been removed from the program? Should the Exchange be required to publish on its Web site the performance standards to which LMMs in the program are subject? What advantages or disadvantages would such disclosures provide? Please explain.

22. Would it be helpful to investors to have public notice of an issuer's participation in the Fixed Incentive Program through means other than on the Exchange's Web site, such as in the issuer's periodic reports to the Commission, on the issuer's Web site, or through a ticker symbol identifier on the consolidated tape? Why or why not?

23. What are commenters' views on whether the proposed disclosures are sufficient to enable all investors, even less sophisticated investors, to understand the potential impact of the proposed Fixed Incentive Program on an ETP, including that an issuer's participation in the program is voluntary and subject to withdrawal?

24. Should the Exchange be required to publicly (and anonymously) disclose statistics on the performance of LMMs? Would such disclosure provide meaningful information to investors (*e.g.,* would such disclosure provide investors the opportunity to assess how much perceived liquidity is being provided by LMMs in the Fixed Incentive Program, as opposed to liquidity provided by market makers and other market participants who are not paid an LMM Payment)? If so, what information should be disclosed and why? If not, why not? What advantages or disadvantages would such disclosure provide? Please explain.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–37 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–37. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–37 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11914 Filed 5–16–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66968; File No. SR–Phlx–2012–57]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Order Fees for Removing Liquidity in Select Symbols

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 30, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Pricing Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.'' The Exchange previously filed an immediately effective rule change, SR–Phlx–2012–27,[3] to amend certain fees and rebates in Section I, which filing was temporarily suspended by the Commission as of April 30, 2012 (''Suspension Order'').[4] At this time, to continue the effectiveness of certain fees and rebates that were contained in SR–Phlx–2012–27, the Exchange is filing this rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27).

[4] By order dated April 30, 2012, the Commission suspended SR–Phlx–2012–27 and SR–Phlx–2012–54. *See* Securities Exchange Release No. 66884 (April 30, 2012).

change. The Exchange is also proposing additional amendments.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to continue the effectiveness of certain rebates and fees originally proposed in SR–Phlx–2012–27, which fees and rebates were temporarily suspended by the Commission. Specifically, the Exchange is proposing to continue the effectiveness of: (i) An increased Customer Complex Order [5] Rebate for Adding Liquidity; (ii) the adoption of a Rebate for Removing Liquidity category and Customer Complex Order Rebate for Removing Liquidity; and (iii) increased Firm, Broker-Dealer and Professional [6] Complex Order Fees for Removing Liquidity. Also, the Exchange proposes to increase the Directed Participant and Market Maker Complex Order Fees for Removing Liquidity in this proposal. Specifically, the Exchange is proposing to amend the Complex Order fees and rebates in Section I of the Exchange's Pricing Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols.'' [7] The proposed amendments will enable the Exchange to continue to reward market participants that add liquidity to the Exchange and allow the Exchange to compete more effectively respecting Complex Orders. The increased Complex Order fees will continue to offset the costs of offering Complex Order rebates to Customers to bring liquidity to the market.

Specifically, SR–Phlx–2012–27 proposed to: (1) Increase the Customer Complex Order Rebate for Adding Liquidity from $0.30 to $0.32 per contract, (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a $0.06 Complex Order Rebate for Removing Liquidity, and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.35 per contract to $0.38 per contract. The Exchange is proposing to continue to pay the rebates and assess the fees, as noted above, which were initially proposed in SR–Phlx–2012–27.

The Exchange is also proposing to increase the Complex Order Directed Participant [8] Fee for Removing Liquidity from $0.30 per contract [9] to $0.34 per contract and the Complex Order Market Maker [10] Fee for Removing Liquidity from $0.32 per contract [11] to $0.36 per contract.

The Exchange is not proposing any amendments to Parts A or C of Section I of the Pricing Schedule.[12]

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange also believes that it is an equitable allocation of reasonable rebates among Exchange members and other persons using its facilities.

Complex Order Customer Rebates

Customer Complex Orders are becoming an increasingly important segment of options trading. The Exchange believes that it is reasonable to increase the current Customer Complex Order Rebate for Adding Liquidity to $0.32 per contract and create a new Customer Complex Order Rebate for Removing Liquidity of $0.06 per contract, because the Exchange seeks to incentivize market participants to direct and transact a greater number of Customer Complex Orders at the Exchange. Creating these incentives and attracting Customer Complex Orders to the Exchange, in turn, benefits all market participants through increased liquidity at the Exchange. A higher percentage of Customer Complex Orders leads to increased Complex Order auctions and better opportunities for price improvement.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates to Customers and not other market participants. Customer Complex Order flow brings unique benefits to the marketplace in terms of liquidity and order interaction. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer Complex Orders. The Exchange believes that it is equitable and not unfairly discriminatory to increase the current Customer Complex Order Rebate for Adding Liquidity to $0.32 per contract and create a new Customer Complex Order Rebate for Removing Liquidity of $0.06 per contract, because the Exchange will uniformly pay these rebates to all Customer orders from any member organization.

[5] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[6] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[7] The Select Symbols are listed in Section I of the Pricing Schedule.

[8] The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader (''SQT'') or Remote Streaming Quote Trader (''RSQT'') resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[9] The Suspension Order reverted the Complex Order Directed Participant Fee for Removing Liquidity from $0.32 per contract to $0.30 per contract as of the date of the Suspension Order.

[10] A ''Market Maker'' includes Specialists (*see* Rule 1020) and Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii), which includes SQTs (*see* Rule 1014(b)(ii)(A)) and RSQTs (*see* Rule 1014(b)(ii)(B)).

[11] The Suspension Order reverted the Complex Order Market Maker Fee for Removing Liquidity from $0.37 per contract to $0.32 per contract as of the date of the Suspension Order.

[12] As part of SR–Phlx–2012–27, the Exchange proposed a volume incentive for Market Makers that executed more than 25,000 contracts per day in a month of Complex Orders, either adding or removing liquidity, in Select Symbols. Market Makers that met the aforementioned volume criteria received a $0.01 per contract reduction of both the Directed Participant and Market Maker Complex Order Fees for Removing Liquidity, as applicable, on all of their transactions for the month. The Suspension Order would eliminate this incentive. The Exchange is not proposing to reinstate that incentive, which will no longer be effective as of the Suspension Order.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

*Complex Order Fees for Removing Liquidity*

The Exchange believes that it is reasonable to increase the Complex Order Fees for Removing Liquidity for Directed Participants, Market Makers, Firms, Broker-Dealers and Professionals so that the Exchange can offer increased rebates to Customers. As previously noted, the Exchange is proposing to increase the Customer Complex Order Rebate for Adding Liquidity and offer a new Customer Complex Order Rebate for Removing Liquidity.

The Exchange believes that it is equitable and not unfairly discriminatory to increase the Complex Order Fees for Removing Liquidity for Directed Participants, Market Makers, Firms, Broker-Dealers and Professionals because, the Exchange is increasing these fees for all market participants, except Customers who are not assessed a fee, to position itself to offer greater Customer Complex Order rebates. The Exchange is consistently assessing lower Complex Order Fees for Removing Liquidity to Directed Participants and Market Makers as compared to Firms, Broker-Dealers and Professionals, because, as has been described in previous filings, these participants have requisite quoting obligations in the series in which they are assigned. Market Makers [15] have burdensome quoting obligations to the market which do not apply to Firms, Professionals and Broker-Dealers. Also, Market Makers that receive Directed Orders [16] have higher quoting obligations compared to other Market Makers and therefore are assessed a lower fee when they transact with a Customer order that was directed to them for execution as compared to Market Makers. In addition, the fee differential of $0.02 per contract as between a Market Maker and Directed Participant is comparable to the fee differential at the International Stock Exchange, Inc. (''ISE'') [17] and is lower than the fee differential at NYSE Amex, LLC (''Amex'').[18] Firms, Broker-Dealers and Professionals are being assessed the same $0.38 per contract fees. Customers are not assessed a Fee for Removing Liquidity, as is the case on competing exchanges.[19]

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates offered to be insufficient. Accordingly, the fees that are assessed by the Exchange and the rebates it pays for options overlying the various Select Symbols in Complex Orders must remain competitive with fees and rebates charged/paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–57 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–Phlx–2012–57. 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–Phlx–2012–57 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11916 Filed 5–16–12; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[16] *Id.*

[17] ISE has a $.02 fee differential as between ISE Market Makers who remove liquidity from the Complex Order Book by trading with orders that are preferenced to them ($0.32 per contract) and non-preferenced ISE Market Makers ($0.34 per contract). *See* ISE's Fee Schedule.

[18] Amex assesses directed and non-directed Specialists and eSpecialists (termed Market Makers at Phlx) a fee of $.13 per contract for removing liquidity in complex orders and a non-directed Market Maker a fee of $0.20 per contract for removing liquidity in complex orders. This $.07 fee differential is greater than Phlx's proposed $.02 fee differential.

[19] *See* the Chicago Board Options Exchange Incorporated's (''CBOE'') Fees Schedule.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66971; File No. SR–EDGA–2012–18]**

## Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2012 the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

### 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, Flag N is yielded when an order removes liquidity from the EDGA book in Tapes B or C securities. In this case, a charge of $0.0007 per share is assessed. In order to provide additional transparency to Members, the Exchange proposes to amend Flag N so that it only applies to orders that remove liquidity from the EDGA book in Tape C securities. The Exchange will continue to assess a charge of $0.0007 per share for Members that utilize Flag N. The Exchange then proposes to add Flag BB for orders that remove liquidity from the EDGA book in Tape B securities. The Exchange proposes to assess a charge of $0.0007 per share for Members that utilize Flag BB. In addition, similar to the footnotes appended to Flag N, the Exchange proposes to append Footnotes 1 and a to Flag BB. Therefore, Members using Flag BB will be subject to the conditions of Footnote 1, which states that all removal rates on EDGA are contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA; and any attributed MPID not meeting the aforementioned minimum will be charged $0.0030 per share for removing liquidity from EDGA for securities priced $1.00 and over and 0.20% of dollar value for securities priced less than $1.00. In addition, Members using Flag BB will be subject to the conditions of Footnote a, under which EDGA will aggregate share volume calculations for wholly owned affiliates on a prospective basis upon the Member's request.

The Exchange proposes to decrease the charge for Flag PX from $0.0020 per share to $0.0012 per share for orders that use the midpoint routing strategy RMPT [4] and are routed out.

The Exchange proposes to append Footnote 17 to Flags PA, PT, and PX to provide that if a Member executes greater than 2 million shares per day, measured monthly, using routing strategy RMPT, then the Member's rate for Flag PA is reduced to $0.0000 per share and the Member's rate for Flags PT and PX is reduced to $0.0008 per share.

The Exchange also proposes to make a technical amendment to the title of the EDGA Book Feed. The Exchange proposes to rename ''EDGA Book Feed'' to ''EdgeBook Depth A'' and to make conforming changes in the description on the fee schedule.

The Exchange proposes to implement these amendments to its fee schedule on May 1, 2012.

2. Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In order to provide additional transparency to Members, the Exchange proposes to amend Flag N to apply to orders that remove liquidity from EDGA book in Tape C securities and to add Flag BB for orders that remove liquidity from the EDGA book in Tape B securities. The Exchange proposes to continue to assess a charge of $0.0007 per share for Members that utilize Flag N and the Exchange proposes to assess a charge of $0.0007 per share for Members that utilize Flag BB. The Exchange believes that utilizing Flag BB to identify Members that remove liquidity from EDGA book in Tape B securities and utilizing Flag N to identify Members that remove liquidity from EDGA book in Tape C securities promotes market transparency and improves investor protection by adding additional transparency to the EDGA fee schedule. This proposed change more precisely delineates for Members whether they are removing liquidity in Tape B or Tape C securities. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members.

The Exchange proposes to decrease the charge for Flag PX from $0.0020 per share to $0.0012 per share for orders that use the RMPT routing strategy and are routed out. The decreased charge is designed to incentivize Members to utilize the RMPT routing strategy to route through EDGA, thereby increasing the amount of liquidity on EDGA, before routing to other low cost destinations and other venues. The Exchange believes that increased liquidity may increase potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* Exchange Rule 11.9(b)(3)(t).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

lower rates. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. In addition, the Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

Footnote 17 (appended to Flags PT, PX, and PT) provides that if a Member executes greater than 2 million shares per day, measured monthly, using routing strategy RMPT, then the Member's rate for Flag PA is reduced to $0.0000 per share and the Member's rate for Flags PT and PX is reduced to $0.0008 per share. The decreased charge is designed to incentivize Members to utilize the RMPT routing strategy to route through EDGA, thereby increasing the amount of liquidity on EDGA, before routing to other low cost destinations and other venues. The Exchange believes that increased liquidity may increase potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of lower rates. The increased liquidity also benefits all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as the ones proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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–EDGA–2012–18 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–EDGA–2012–18. 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–EDGA–2012–18 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11926 Filed 5–16–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66973; File No. SR–NYSEArca–2012–39]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating To Listing and Trading the Global Alpha & Beta ETF Pursuant to NYSE Arca Equities Rule 8.600

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] notice is hereby given that, on April 30, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Global Alpha & Beta ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares [3] (''Shares'') under NYSE Arca Equities Rule 8.600: Global Alpha & Beta ETF (''Fund'').[4] The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Your Source Financial, PLC (''Sub-Adviser'') is the Fund's sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (''Administrator'') serves as the administrator, custodian, transfer agent, and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund's investment objective is long-term capital growth. The Fund is an exchange-traded fund (''ETF'') that is actively managed and thus does not seek to replicate the performance of a specific index.

The Fund is a ''fund of funds'' that seeks to achieve its investment objective by investing, under normal conditions,[7] 80% or more in other U.S.-listed exchange-traded products (''Underlying

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Exchange-Traded Fund Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2001) (SR–NYSEArca–2011–51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

[5] The Trust is registered under the 1940 Act. On January 30, 2012, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] ''Normal conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

ETPs''),[8] U.S. exchange-listed common stock of issuers of any capitalization range, and U.S. exchange-listed sponsored American Depositary Receipts (''ADRs'')[9] that provide investment exposure to global equity markets and that meet certain selection criteria established by the Sub-Adviser.

The Sub-Adviser will seek to achieve the Fund's investment objective by implementing a ''top-down'' portfolio management style. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries, or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis. A ''top-down'' portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance.

Prior to making an investment for the Fund, the Sub-Adviser will consider two indicators: (i) the 200-day moving average of the S&P 500 Index (''Index''); and (ii) an inverted yield curve.[10] If the Index is below its 200-day moving average or if the yield curve is inverted, the Sub-Adviser will maintain a defensive position in the Fund's portfolio.[11]

The Fund's asset allocation and performance baseline benchmark is the Index. The Index consists of ten separate industry sectors—each of which has a weighting in the Index as a whole. In selecting investments for the Fund's portfolio, the Sub-Adviser will seek to add value by overweighting sectors that the Sub-Adviser expects to perform well and underweighting sectors that it expects to perform poorly.

The Sub-Adviser seeks to maintain diversification among and across economic sectors, industries, and countries. The Sub-Adviser will consider the following factors when selling investments in the Fund's portfolio: (i) Whether an equity security has reached a price considered to be fully valued; (ii) business or sector risk exposure to a specific security or class of securities; (iii) overvaluation or overweighting of the position in the Fund's portfolio; (iv) change in risk tolerance; and (v) identification of a better opportunity.

Other Investments

While the Fund will invest at least 80% in the Underlying ETPs, U.S. exchange-listed common stock of issuers of any capitalization range, and U.S. exchange-listed sponsored ADRs, on a day-to-day basis, the Fund may hold the remainder of its assets in, under normal conditions,[12] money market instruments, cash, other cash equivalents, and other highly liquid instruments.

The Fund may invest in other types of equity securities. Equity securities represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

The Fund may invest in exchange-traded notes (''ETNs'').[13] The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds.

In the absence of normal conditions,[14] the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through its investments in ETFs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements,[15] and bonds that are rated BBB or higher.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of an ADR will be deemed to be the issuer of the respective underlying security.[16]

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the

[8] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Underlying ETPs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund intends to invest in ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (''Code'').

[9] ADRs are U.S. dollar denominated receipts representing interests in the securities of a foreign issuer, which securities may not necessarily be denominated in the same currency as the securities into which they may be converted. ADRs are receipts typically issued by United States banks and trust companies which evidence ownership of underlying securities issued by a foreign corporation. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the United States. The Fund may invest up to 10% of total assets in ADRs traded over-the-counter.

[10] An inverted yield curve occurs when short-term interest rates exceed long term rates and historically has been viewed as an indicator of a pending economic recession.

[11] Such a defensive position would be a more conservative allocation involving any combination of (a) reducing equity exposures (*i.e.,* U.S. exchange-listed common stock and U.S. exchange-listed ADRs), (b) investing in inverse ETFs (the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs), and (c) increasing investments in short-term, high-quality debt securities and money market instruments, cash, and cash equivalents, including through increasing investments in U.S. exchange-listed Underlying ETPs holding short-term debt or cash and cash equivalents.

[12] *See* note 8, *supra.*

[13] ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees.

[14] *See* note 8, *supra.*

[15] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. In addition, the Fund may enter into reverse repurchase agreements as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[16] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this policy, the issuer of ADRs will be deemed to be the issuer of the respective underlying security.[17]

The Fund will not purchase illiquid securities, including Rule 144A securities and loan participations.[18] While the Fund does not anticipate doing so, the Fund may hold securities that become illiquid, including securities that are not readily marketable and Rule 144A securities. The Fund will not hold more than 15% of the Fund's net assets in illiquid securities including Rule 144A securities and loan participations. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities.

While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund may invest up to 10% of total assets in ADRs traded over-the-counter.[19]

The Fund will not invest in any non-U.S. registered equity security, including depositary receipts.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Code.[20]

Net Asset Value

The Fund will calculate its Net Asset Value (''NAV'') by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC (''NYSE'') (normally, 4:00 p.m., Eastern Time (''E.T.'')). In calculating NAV, the Fund will generally value its investment portfolio at market price. If market prices are unavailable or the Fund thinks that they are unreliable or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board of Trustees.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at the NAV only in a large specified number of Shares called a ''Creation Unit.'' The Shares of the Fund that trade on the Exchange will be ''created'' at their NAV by market makers, large investors, and institutions only in block-size Creation Units of at least 25,000 Shares. A ''creator'' will enter into an authorized participant agreement (''Participant Agreement'') with the Distributor or use a Depository Trust Company participant who has executed a Participant Agreement (''Authorized Participant''), and will deposit into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 25,000 Shares of the Fund (or multiples thereof).

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. Beneficial owners must accumulate enough Shares in the secondary market to constitute a Creation Unit in order to have such Shares redeemed by the Trust. Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund securities—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund securities, less a redemption transaction fee.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[21] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-

[17] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[18] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[19] *See* note 10, *supra.*

[20] 26 U.S.C. 851. One of several requirements for RIC qualification is that the Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies, and net income from an interest in a qualified publicly traded partnership (''90% Test''). A second requirement for qualification as a RIC is that the Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (''Asset Test'').

[21] 17 CFR 240.10A–3.

point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[23]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and, for the underlying securities, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[24] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[26] In addition, the Exchange could obtain information from the U.S. exchanges on which the Underlying ETPs, common stock, exchange-listed ADRs, and other U.S. exchange-listed securities are listed and traded.

[22] The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[25] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[26] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter. *See* note 10, *supra*.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [27] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or have entered into a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter. While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective. The Fund will not hold more than 15% of the Fund's net assets in illiquid securities, including Rule 144A securities and loan participations. Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund will not invest in any non-U.S. registered equity security, including depositary receipts.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol, name of security and/or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and/or financial instrument in the portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[27] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–39 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–39. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–39 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11928 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66972; File No. SR–NASDAQ–2012–059]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish ''Benchmark Orders'' Under NASDAQ Rule 4751(f)

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASDAQ is filing with the Commission a proposed rule change to establish various ''Benchmark Orders'' under NASDAQ Rule 4751(f). The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In order to provide enhanced functionality, NASDAQ is proposing to establish a set of ''Benchmark Orders,'' a new order type for use in trading cash equities. The Benchmark Order will offer members the ability to enter a single order in a single security seeking to match the performance of a selected benchmark over a pre-determined period of time. The Benchmark Order will provide entering firms additional tools to manage large trades, including potentially reducing price impact from such large trades. These Benchmark Orders will also assist entering firms by increasing flexibility to manage their trading interest intraday. To further assist members, NASDAQ will provide those entering Benchmark Orders with detailed analytics with which to measure the performance of Benchmark Orders *vis à vis* the relevant benchmarks.

The Benchmark Order will not itself be available for execution, but instead will be used by a sub-system of the trading system to generate a series of ''Child Orders'' of the types that already exist in the current NASDAQ rules. The Child Orders of a Benchmark Order may be executed within the NASDAQ system under NASDAQ's existing processing rules, or made available for routing under NASDAQ's current routing rules.[3]

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As with routable orders today, Child Orders entered onto the NASDAQ book will be in the members' name, while orders routed to other

Continued

All Child Orders of Benchmark Orders will comport with NASDAQ's existing rules, including (for example) rules designed to enforce compliance with Regulation NMS and the SEC Market Access Rule.

Initially, NASDAQ will offer three underlying benchmarks for the Benchmark Orders: Volume Weighted Average Price (''VWAP''), Time Weighted Average Price (''TWAP'') and Percent of Volume (''POV''). In addition to order entry information common to all order types of all attributes—security, buy/sell side, shares, and price—a member choosing the Benchmark Order will enter order information relevant to the Benchmark Order attribute, including (for example) the benchmark selected, the start time and duration of the order, and the percent of volume target (if any). NASDAQ members may enter Benchmark Orders via an existing NASDAQ protocol and an existing NASDAQ port; no new protocols or ports will be required.[4] Benchmark Orders will be assigned unique identification numbers, as is the case for all orders in the NASDAQ system, used for tracking purposes as described below.

Benchmark Orders will not be executed by the NASDAQ matching engine, but will upon entry be directed to a system application dedicated to processing Benchmark Orders (''Application'').[5] The Application will process the Benchmark Order in accordance with pre-determined logic designed to achieve benchmark performance based upon the entering firm's instructions. For example, consider a Benchmark Order containing instructions for the Application to buy 5,000 shares and achieve a VWAP in Security ABCD over the period from 9:30 a.m. to 10:00 a.m. The Application logic will include the calculation of a VWAP, the method for replicating that VWAP, the order types necessary to achieve that replication, and the prices at which such orders would need to execute. The Application will generate such Child Orders as are necessary to achieve the desired benchmark selected by the entering firm. Child Orders will be formatted using already-approved NASDAQ order types and times in force as set forth in NASDAQ Rule 4751.[6] Child Orders will also be marked with unique identifiers, as is the case for all orders, for use in linking Child Orders to Benchmark Orders. Other than creating a Benchmark Order type for entry purposes, no new order types or times in force are being proposed.

The Application will not be capable of executing either Benchmark Orders or Child Orders but will instead send Child Orders, using the proper system protocol,[7] to the NASDAQ matching engine or to the NASDAQ router as needed to complete the Benchmark Order.[8] Thus, returning to the previous example of a Benchmark Order to buy 5,000 shares at the VWAP, the Application may determine it is necessary to send a marketable limit order to buy 1,000 shares of security ABCD at $10.00 in order to complete the desired VWAP order. The Application will format the necessary orders, perhaps two orders for 500 shares each, and send those orders to the NASDAQ matching engine because NASDAQ is displaying 900 shares of ABCD at $10.00. The Application will continue to monitor market conditions, recalculate the VWAP as necessary, monitor the Child Orders generated and executions received (via standard system messaging and tracking processes) and produce new Child Orders as necessary to achieve the desired overall execution. Benchmark Orders will be available for entry and execution during the system hours specified in NASDAQ rules. The parent order will remain active in the NASDAQ system until fully executed, expired, or cancelled by the entering member.[9]

Child Orders of Benchmark Orders will be processed in an identical manner to orders generated independently of a Benchmark Order. Trade reporting, OATS reporting, and clearing of Child Orders and trades will occur in the same manner as currently existing order types. Additionally, pre-trade checks required by the Market Access Rule (SEC Rule 15c3–5) will be made on both Benchmark Orders submitted by members as well as Child Orders created by the Application. All Child Orders will be checked for compliance with Regulation NMS prior to being routed. All fees applicable to existing orders and trades will apply to Child Orders.[10] The only difference in processing of Child Orders *vis à vis* independently formatted orders of the same type will be the system messages transmitted between the Application and other parts of the NASDAQ system.

NASDAQ considers the Application to be a functional offering of the NASDAQ Stock Market, similar to other functions that process member trading interest, including other order types, order routing and order matching capabilities. Thus, although the technology will be licensed from a third party (''Third Party Provider''), the Application will be integrated closely with the NASDAQ system and provided to members subject to NASDAQ's obligations and responsibilities as a self-regulatory organization.

NASDAQ has taken steps to provide that the Application performs to the standards NASDAQ sets for itself and that that the SEC sets for all SROs. For example, NASDAQ will test the Application rigorously and regularly to ensure that the Application is performing the desired calculations and that it is doing so in a manner that complies with applicable SEC regulations and NASDAQ rules. NASDAQ will monitor the Application performance on a real-time and continuous basis just as it monitors all functions performed by the NASDAQ system. NASDAQ will have access to the technology, employees and books and records of the third party provider that are related to the Application and its interaction with NASDAQ and NASDAQ members.

The Third Party Provider will have no discretion with respect to Benchmark Orders and will have no authority other than to apply the licensed technology to such Benchmark Orders it receives from NASDAQ. Neither the Third Party

venues will be performed by NASDAQ Execution Services (''NES'').

[4] Currently, orders that may become available for routing, including Benchmark Orders if approved, are entered using either NASDAQ's proprietary INET FIX or RASHport protocol.

[5] The relationship between NASDAQ and the Application technology provider is described in more detail below.

[6] Child Orders may be generated by the System using preexisting order types in the RASH system, including previously filed strategies (*e.g.* SCAN, STGY, ISNY). Child Orders may be generated with instructions available to pre-existing order types including but not limited to Limit Orders, Market Pegged Orders, Primary Pegged Orders, Midpoint Pegged Orders, orders with instructions to participate in opening or closing crosses, Post-Only Orders, Intermarket Sweep Orders, Minimum Quantity Orders, Non-Display Orders, and Directed Orders.

[7] Benchmark Orders may be entered using the INET FIX or NASDAQ RASH protocols. Child Orders will use available protocols in the same way that similar orders use them independent of Benchmark Orders. Different protocols offer members different means of setting parameters based on the technological characteristics of the protocols.

[8] Child Orders that require routing will be routed by NES, NASDAQ's wholly-owned routing broker-dealer, according to the same rules and processes applicable to all orders routed from NASDAQ pursuant to NASDAQ Rule 4758.

[9] In the event a member cancels an order, that member will be responsible for all executions completed prior to the time of cancellation, as well as all fees appurtenant to such executions.

[10] NASDAQ has not determined the level of fee to assess for the execution of a Benchmark Order. When NASDAQ determines the proper fee for the Benchmark Order, it will file a proposed rule change as required.

Provider nor its employees will have information or access to information about NASDAQ members that submit Benchmark Orders. Benchmark Orders will be received by NASDAQ and not by the Third Party Provider, and messages sent from NASDAQ to the Third Party Provider will contain no information by which the Third Party Provider can identify the specific NASDAQ member that entered the order(s). The Third Party Provider will store messages related to NASDAQ Benchmark Orders only for the purposes of providing end-of-day analytics and to comply with applicable books and records requirements.

The Third Party Provider will have no actionable advantage over NASDAQ members with respect to the NASDAQ system. The third party hardware and software will be subordinate to the NASDAQ matching engine and router. The Application will not itself be capable of executing orders; it will only generate messages and instructions to be carried out by the NASDAQ system in accordance with existing NASDAQ rules. NASDAQ will maintain control of and responsibility for the Application and the NASDAQ system. The Third Party Provider has a registered broker-dealer affiliate; however that affiliate will be performing no broker-dealer functions with respect to NASDAQ Benchmark Orders.[11] The sole function to be performed by the Third Party Provider's broker-dealer affiliate will be to accept from NASDAQ post-execution per-share compensation related to Benchmark Orders.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(5) of the Act,[13] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and 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.

Specifically, NASDAQ believes that the Benchmark Order is consistent with and supports the goals of Section 6(b)(5) because it facilitates transactions in securities and improves trading within the national market system. The Benchmark Order will permit members to achieve on an exchange via a single order type what previously has required access to multiple venues using multiple order types. NASDAQ will enable members to leverage NASDAQ's existing access and existing order types to make benchmarking easier and more efficient. For the members that already have such capabilities, the Benchmark Order will represent another option. Additionally, the Benchmark Order will expand benchmarking capability to firms that currently lack it or lack an exchange-based alternative.

NASDAQ further believes that the Benchmark Order will achieve new efficiency and cost savings for members. For NASDAQ members that rely on NASDAQ to help manage a significant percentage of their order flow, the Benchmark Order will extend that capability and thereby allow members to manage more order flow at a single trading platform. Members that choose to use Benchmark Orders will use the same ports and connectivity and the same programming protocols that they currently use for other NASDAQ orders. Additionally, because Benchmark Orders will be based on the same market data that NASDAQ uses today, members should incur no additional charges for market data feeds.

Finally, the Benchmark Order will increase transparency because NASDAQ will offer members detailed analytics regarding the performance of their Benchmark Orders. These analytics will be a ''scorecard'' not available today against which members will measure the actual performance of Benchmark Orders versus the selected benchmark. Members may use this tool to experiment with Benchmark Orders and, if successful, determine to enter additional Benchmark Orders or to refrain from entering them. The analytics will be limited to information concerning the members' own executions and as such will include no market data that is proprietary to another member.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the establishment of Benchmark Orders on NASDAQ will enhance NASDAQ's ability to compete with similar functionality that already is widely dispersed in the industry both among members and trading venues. The Benchmark Order is a voluntary offering; voluntary on the part of the Exchange which is not required to offer it and voluntary on the part of members that are not required to use it. If the predicted enhancements and improvements of the Benchmark Order do not materialize, members will simply choose to ignore it. NASDAQ's decision to offer the Benchmark Order is a further indication of the competitiveness of the market for trading platforms. Continued improvements and enhancements such as the Benchmark Order are necessary in order to attract order flow and execute transactions. This need is heightened because the functionality underlying the Benchmark Order has for some time been made available by alternative trading systems that perform functions similar to NASDAQ but that have been exempted from the requirements of filing proposed rule changes, among others.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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

[11] As described above, Child Orders generated by the Application that require routing will be routed by NES and not by the Third Party Provider or its broker-dealer affiliate. As a result, the Third Party Provider and affiliate will have no reporting obligations with respect to Benchmark Orders under NASDAQ's OATS rules. *See* OATS Technology Specifications Scenario 4.4.22 (Routing Services Provided By Members).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2012–059 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–059. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–059 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11927 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66970; File No. SR–EDGX–2012–17]**

## Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2012 the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

### 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, Flag N is yielded when an order removes liquidity from the EDGX book in Tapes B or C securities. In this case, a charge of $0.0029 per share is assessed.

In order to provide additional transparency to Members, the Exchange proposes to amend Flag N so that it only applies to orders that remove liquidity from the EDGX book in Tape C securities. The Exchange will continue to assess a charge of $0.0029 per share for Members that utilize Flag N. The Exchange then proposes to add Flag BB for orders that remove liquidity from the EDGX book in Tape B securities. The Exchange proposes to assess a charge of $0.0029 per share for Members that utilize Flag BB. In addition, similar to the footnotes appended to Flag N, the Exchange proposes to append Footnotes 1 and 12 to Flag BB. Therefore, Members will be eligible for the tiers provided for in Footnote 1 if the conditions outlined therein are satisfied. In addition, Members using Flag BB will be subject to the conditions of Footnote 12 because Flag BB is a removal flag. The Exchange also proposes to include Flag BB in the list of removal flags in Footnote 13 with regards to the Investor Tier. The Exchange notes that Flag N is currently in the list of removal flags for Footnotes 12 and 13.

The Exchange also proposes to amend the message-to-trade ratio in (iii) of Footnote 13 from less than 4:1 to less than 6:1. Therefore, Footnote 13, after the amendments described above are applied will read, ''A Member can qualify for an Investor Tier and be provided a rebate of $0.0030 per share if they meet the following criteria: (i) On a daily basis, measured monthly, posts an ADV of at least 8 million shares on EDGX where added flags are defined as B, HA, V, Y, MM, 3, or 4; (ii) have an ''added liquidity'' to ''removed liquidity'' ratio of at least 70% where added flags are defined as B, HA, V, Y, MM, 3, or 4 and removal flags are defined as BB, MT, N, W, PI, or 6; and (iii) have a message-to-trade ratio of less than 6:1.''

The Exchange also proposes to make a technical amendment to reduce the rebate from $0.0004 per share to $0.0003 per share for Flag RA. This change is a pass through of the EDGA reduction in

rebate for removing liquidity, which was effective on April 1, 2012.[4]

The Exchange appended Footnote 11 to Flag 5 in its June 8, 2011 rule filing.[5] The Exchange proposes to make a technical amendment to the first paragraph of Footnote 11 to identify Flag 5 in the description of the footnote as one of the flags that yields internalization. In the second paragraph of Footnote 11, the Exchange also proposes a technical amendment to specify that this paragraph only applies to Flags EA or ER.

The Exchange also proposes to make a technical amendment to the title of the EDGX Book Feed. The Exchange proposes to rename ''EDGX Book Feed'' to ''EdgeBook Depth X'' and to make conforming changes in the description on the fee schedule.

The Exchange proposes to implement these amendments to its fee schedule on May 1, 2012.

2. Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

In order to provide additional transparency to Members, the Exchange proposes to amend Flag N to apply to orders that remove liquidity from EDGX book in Tape C securities and to add Flag BB to orders that remove liquidity from the EDGX book in Tape B securities. The Exchange proposes to continue to assess a charge of $0.0029 per share for Members that utilize Flag N and the Exchange proposes to assess a charge of $0.0029 per share for Members that utilize Flag BB. The Exchange believes that utilizing Flag BB to identify Members that remove liquidity from the EDGX book in Tape B securities and utilizing Flag N to identify Members that remove liquidity from EDGX book in Tape C securities promotes market transparency and improves investor protection by adding additional transparency to the EDGX fee schedule. This proposed change more precisely delineates for Members whether they are removing liquidity in Tape B or Tape C securities. The proposed changes to Footnotes 12 and 13 to add Flag BB to the list of removal flags for the applicable tiers/rates outlined also provides additional transparency to Members. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members.

The Exchange proposes to amend the message-to-trade ratio in (iii) of Footnote 13 from less than 4:1 to less than 6:1 because the Exchange believes that a message-to-trade ratio of less than 6:1 represents a more appropriate criterion for Members to qualify for a rebate of $0.0030 per share associated with the Investor Tier. The Exchange believes the proposed message-to-trade ratio incentivizes Members to direct a high quality order flow to the Exchange because the Exchange believes that such high quality liquidity provisions will encourage price discovery and market transparency and improve investor protection by encouraging growth in liquidity. In addition, the Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members.

The reduction in rebate on Flag RA is a pass-through of the reduction in rebate on EDGA's fee schedule for adding liquidity from $0.0004 to $0.0003, effective April 1, 2012.[8] The Exchange believes the proposed rebate of $0.0003 is equitable and reasonable as it represents a pass-through of the rebate for adding liquidity to the EDGA book. In addition, the Exchange also believes that the proposed pass-through of this rate is non-discriminatory because it applies uniformly to all Members.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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–EDGX–2012–17 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–EDGX–2012–17. This file number should be included on the subject line if email is used. To help the

[4] *See* Securities Exchange Act Release No. 66763 (April 6, 2012), 77 FR 22008 (April 12, 2012) (SR–EDGA–2012–13).

[5] *See* Securities Exchange Act Release No. 64632 (June 8, 2011), 76 FR 34792 (June 14, 2012) (SR–EDGX–2011–17)[sic]. In SR–EDGX–2011–17, the Exchange appended Footnote 11 to Flag 5 and the Exchange represented that the internalization fee is no more favorable than each prevailing maker/taker spread. However, the Exchange noted that if a Member receives a tiered rebate because the Member posts 10,000,000 shares or more of average daily volume to EDGX, then the Member would get the current rate of $0.0001 per share per side for customer internalization.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 66763 (April 6, 2012), 77 FR 22008 (April 12, 2012) (SR–EDGA–2012–13).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 19b–4(f)(2).

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–EDGX–2012–17 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11925 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66967; File No. SR–Phlx–2012–60]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the PHLX Depth of Market Data Product

May 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a direct market data product, PHLX Depth of Market. PHLX Depth of Market is a data feed that will include full depth of quotes and orders, imbalance information and last sale data for options listed on PHLX.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to establish the PHLX Depth of Market data product. PHLX Depth of Market is a data product that provides: (i) Order and quotation information for individual quotes and orders on the PHLX book; (ii) last sale information for trades executed on PHLX; and (iii) an Imbalance Message, as described below.

The Imbalance Message includes the symbol, side of the market, size of matched contracts, size of the imbalance, and price of the affected series.[3] The Imbalance Message should enable PHLX Depth of Market subscribers to participate effectively in the PHLX Opening Process [4] by providing them with information during the Opening Process when there is an opening imbalance.[5]

PHLX Depth of Market is the equivalent of, and is based on, the NASDAQ ITCH to Trade Options or ''ITTO'' data feed that NASDAQ offers under NASDAQ Options Market (''NOM'') Rules, Chapter VI, Section 1(a)(3)(A).[6] As with ITTO, subscribers would use PHLX Depth of Market to ''build'' their view of the PHLX book by adding individual orders that appear on the feed, and subtracting individual orders that are executed.

The Exchange will establish monthly fees for the PHLX Depth of Market data product by way of a separate proposed rule change, which the Exchange will submit after the PHLX Depth of Market product is established.

PHLX Depth of Market provides data that should enhance the ability to analyze market conditions, and to create and test trading models and analytical strategies. The Exchange believes that PHLX Depth of Market is a valuable tool that can be used to gain comprehensive insight into the trading activity in a particular option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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, by establishing a market data product that enhances subscribers' ability to make decisions on trading strategy, and by providing data to facilitate such decisions in a timely manner.

The Exchange represents that it will make the PHLX Depth of Market data product equally available to any market participant that wishes to subscribe to it.

[3] *See* Exchange Rule 1017(l)(vi)(A).

[4] For a description of the Opening Process, see Exchange Rule 1017(l).

[5] An opening ''imbalance'' occurs where there is unexecutable trading interest at a certain price. *See* Exchange Rule 1017(l)(ii)(A).

[6] *See* Securities Exchange Act Release No. 63983 (February 25, 2011), 76 FR 12178 (March 4, 2011) (SR–NASDAQ–2011–032).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–60 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 No. SR–Phlx–2012–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–60 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–11915 Filed 5–16–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 16, 2012. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Disability Report–Adult—20 CFR 404.1512 and 416.912—0960–0579. State Disability Determination Services (DDS) use the SSA–3368 and its electronic versions to determine if adult disability applicants' impairments are severe and, if so, how the impairments affect the applicants' ability to work. This determination dictates whether the DDSs and SSA will find the applicant to be disabled and entitled to Supplement Security Income (SSI) payments. The respondents are applicants for title II disability benefits or title XVI SSI payments.

Type of Request: Revision of an OMB-approved information collection.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

| Collection method | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–3368 (paper) | 29,072 | 1 | 60 | 29,072 |
| Electronic Disability Collect System (EDCS) | 2,853,426 | 1 | 60 | 2,853,426 |
| I3368 (Internet) | 421,226 | 1 | 90 | 631,839 |
| Totals | 3,303,724 | | | 3,514,337 |

2. Social Security Number Verification Services—20 CFR 401.45—0960–0660. Internal Revenue Service regulations require employers to provide wage and tax data to SSA using Form W–2 or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security number (SSN). In addition, the employee's name and SSN must match SSA's records for SSA to post earnings to the employee's earnings record, which SSA maintains. SSA offers the Social Security Number Verification Service (SSNVS), which allows employers to verify the reported names and SSNs of their employees match those in SSA's records. SSNVS is a cost-free method for employers to verify employee information either through the Internet or via telephone. The respondents are employers who need to verify SSN data using SSA's records.

Type of Request: Revision of an OMB-approved information collection.

| Collection method | Number of respondents | Frequency of response | Number of responses | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|---|
| SSNVS | 200,000 | 60 | (12,000,000) | 5 | 1,000,000 |
| SSNVS Telephone | 50,000 | 2 | (100,000) | 10 | 16,667 |
| Totals | 250,000 | | (12,100,000) | | 1,016,667 |

3. Electronic Records Express (Third Parties)—20 CFR 404.1700–404.1715—0960–0767. Electronic Records Express (ERE) is an online system that enables medical providers and various third-party representatives to download and submit disability claimant information electronically to SSA as part of the disability application process. To ensure only authorized people access ERE, SSA requires third parties to complete a unique registration process if they wish to use this system. This Information Collection Request (ICRSs) includes the third-party registration process; the burden for submitting evidence to SSA is part of other, various ICRs. The respondents are third-party representatives of disability applicants or recipients who want to use ERE to electronically access clients' disability files online and submit information to SSA.

Type of Request: Revision of an OMB-approved information collection.

| Collection method | Number of respondents | Frequency of response | Number of responses | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|---|
| ERE | 9,000 | 283 | 2,547,000 | 1 | 42,450 |

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 18, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OPLM.RCO@ssa.gov.*

1. Request for Withdrawal of Application—20 CFR 404.640—0960–0015. Form SSA–521 documents the information SSA needs to process the withdrawal of an application for benefits. A paper SSA–521 is the preferred instrument for executing a withdrawal request; however, any written request for withdrawal signed by the claimant or a proper applicant on the claimant's behalf will suffice. Individuals who wish to withdraw their applications for benefits complete Form SSA–521, or sign the completed form for each request to withdraw. SSA uses the information from Form SSA–521 to process the request for withdrawal. The respondents are applicants for Retirement, Survivors, Disability, and Health Insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

| Collection method | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| SSA–521 | 39,000 | 1 | 5 | 3,250 |

2. Testimony by Employees and the Production of Records and Information in Legal Proceedings—20 CFR 403.100–403.155—0960–0619. Regulations at 20 CFR 403.100–403.155 of the Code of Federal Regulations establish SSA's policies and procedures for an individual, organization, or government entity to request official agency information, records, or testimony of an agency employee in a legal proceeding where the agency is not a party. The request, which respondents submit in writing to the Commissioner, must (1) fully set out the nature and relevance of the sought testimony; (2) explain why the information is not available by other means; (3) explain why it is in SSA's interest to provide the testimony; and (4) provide the date, time, and place for the testimony. Respondents are individuals or entities who request testimony from SSA employees in connection with a legal proceeding.

Type of Request: Extension of an OMB-approved information collection.

| Collection method | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated annual burden (hours) |
|---|---|---|---|---|
| 20 CFR 403.100–403.155 | 100 | 1 | 60 | 100 |

Dated: May 11, 2012.

**Faye Lipsky,**

*Reports Clearance Director, Office of Regulations and Reports Clearance, Social Security Administration.*

[FR Doc. 2012–11917 Filed 5–16–12; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 7889]**

### 60-Day Notice of Two Proposed Directorate of Defense Trade Controls Information Collections: ''Request To Change End-User, End-Use, and/or Destination of Hardware'' and ''Request for Advisory Opinion''

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request To Change End-User, End-Use, and/or Destination of Hardware.
- *OMB Control Number:* 1405–0173.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DS–6004.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 2,700.
- *Estimated Number of Responses:* 2,700.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 2,700 hours.
- *Frequency:* On Occasion.
- *Obligation To Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Request for Advisory Opinion.
- *OMB Control Number:* 1405–0174.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DS–6001.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 250.
- *Estimated Number of Responses:* 250.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 250 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

**DATES:** The Department will accept comments from the public up to 60 days from May 17, 2012.

**ADDRESSES:** Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, U.S. Department of State, who may be reached via the following methods:

- *Internet:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov.* You can search for the document by selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID,'' checking the ''Open for Comment'' box, and then clicking ''Search.'' If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: memosni@state.gov.*
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

You must include the information collection title in the subject line of your message/letter.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2829, or via email at *memosni@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit

annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

*Methodology:* These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: mail or personal delivery.

Dated: May 14, 2012.

**Robert S. Kovac,**

*Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.*

[FR Doc. 2012–11981 Filed 5–16–12; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2012–17]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before June 6, 2012.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2012–0455 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kenna Sinclair, ANM–113, (425) 227–1556, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Frances Shaver, ARM–207, (202–267–4059), Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 14, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

### PETITION FOR EXEMPTION

Docket No.: FAA–2012–0455
Petitioner: The Boeing Company
Section of 14 CFR Affected:
§§ 25.855(b), 25.855(h)(2), 25.857(e)(2), and 25.857(e)(3)
Description of Relief Sought: The petitioner requests relief from the design and performance requirements regarding fire protection systems for the lower lobe cargo compartments on the Boeing Model 747–400 large cargo freighters.

[FR Doc. 2012–11987 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2012–16]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before June 6, 2012.

**ADDRESSES:** You may send comments identified by docket number FAA–2012–0290 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration,

1601 Lind Avenue SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–4059, Office of Rulemaking (ARM–207), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 14, 2012.

**Lirio Liu,**

*Acting Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2012–0290.

*Petitioner:* Halliburton Energy Services.

*Section of 14 CFR Affected:* § 25.807.

*Description of Relief Sought:* The petitioner requests relief from the requirement to have a standard-sized, Type III overwing exit on Gulfstream Model GV–SP, G500, and G550 airplanes.

[FR Doc. 2012–11986 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2012–0129]**

### Agency Information Collection Activities; Extension of a Currently Approved Collection; Training Certification for Entry-Level Commercial Motor Vehicle Operators

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval, and invites public comment. The FMCSA has developed an improved estimate of the number of annual responses to this information collection. The result is an increase in the Agency's estimate of the total annual burden hours of this collection.

**DATES:** We must receive your comments on or before July 16, 2012.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0129 using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.
- *Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. 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 heading below.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and follow the online instructions for accessing the dockets, or go to the street address listed above.
- *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 the Department of Transportation's (DOT) complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8–794.pdf.*
- *Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*) established the commercial driver's license (CDL) program and directed the Federal Highway Administration (FHWA), FMCSA's predecessor agency, to establish minimum qualifications for issuance of a CDL. After public notice and an opportunity for comment, the FHWA established standards for the knowledge and skills which a CDL applicant must satisfy.

In 1985, the FHWA published ''Model Curriculum for Training Tractor-Trailer Drivers.'' The FHWA did not mandate driver training at that time. It believed the cost of developing a comprehensive driver-training program was too high in terms of agency resources. This was especially so, FHWA believed, in light of its reasonable expectation that the level of safety of entry level drivers would soon be elevated because (1) the deadline for States to adopt the new mandatory CDL-licensing standards for driver knowledge and skills was still in the future, and (2) many truck driving schools had updated their curricula in light of the new model curriculum (''Truck Safety: Information on Driver Training,'' Report of the U.S. General Accounting Office, GAO/RCED–89–163, August 1989, pages 4 and 5).

In 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991) directed the FHWA to ''commence a rulemaking proceeding on the need to require training of all entry-level drivers of commercial motor vehicles (CMVs)'' (Section 4007(a)(2)). On June 21, 1993, the FHWA issued an advance notice of proposed rulemaking entitled, ''Commercial Motor Vehicles: Training for All Entry Level Drivers'' (58 FR 33874). The Agency also began a study of the effectiveness of the driver training currently being received by entry-level CMV drivers. The results of the study were published in 1997 under the title ''Adequacy of Commercial Motor Vehicle Driver Training.'' The study is available under FMCSA Docket 1997–2199 at the *Federal eRulemaking Portal* (*www.regulations.gov*) described above. The study found that three segments of the trucking industry were not receiving adequate entry-level training: heavy truck, motor coach, and school bus.

On August 15, 2003, FMCSA published a notice of proposed

rulemaking (NPRM) entitled, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (68 FR 48863). The Agency proposed mandatory training for operators of CMVs on four topics: driver qualifications, hours-of-service of drivers, driver wellness and whistle-blower protection. The Agency believed that knowledge of these areas would provide the greatest benefit to the safety of CMV operations. On May 21, 2004, FMCSA by final rule prohibited a motor carrier from allowing an entry-level driver to operate a CMV until it received a written certificate indicating that the driver had received training in the four subject areas (69 FR 2004). The rule became effective on July 20, 2004. Training providers were required to provide a certificate to each driver trainee receiving the requisite training.

In 2005, the U.S. Court of Appeals for the District of Columbia Circuit held that FMCSA had failed to consider important aspects of an adequate entry-level training program. It remanded the 2004 driver-training rule to the Agency for further consideration. On December 26, 2007, FMCSA proposed revised minimum standards for the mandatory training of entry-level CDL drivers (72 FR 73226). The Agency has analyzed the public comments received in response to the notice, and is continuing to develop a final rule on this subject.

*Title:* Training Certification for Entry-Level Commercial Motor Vehicle Operators

*OMB Control Number:* 2126–0028.

*Type of Request:* Extension of a currently approved ICR.

*Respondents:* Entry-level CDL drivers.

*Estimated Number of Respondents:* 397,500. .

*Estimated Time per Response:* 10 minutes.

*Expiration Date:* November 30, 2012.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 66,250 hours. FMCSA estimates that an entry-level driver requires approximately 10 minutes to complete the tasks necessary to comply with the regulation. Those tasks are: photocopying the training certificate, giving the photocopy to the motor carrier employer, and placing the original of the certificate in a personal file. Therefore, the annual burden for all entry-level drivers is 66,250 hours [397,500 drivers x 10/60 minutes to respond = 66,250 hours].

*Definitions:* (1) ''Federal Motor Carrier Safety Regulations'' (FMCSRs) are parts 350–399 of volume 49 of the Code of Federal Regulations. (2) ''Commercial motor vehicle'' (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—(a) has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds); or (b) has a GVWR of 11,794 or more kilograms (26,001 pounds or more); or (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used in the transportation of hazardous materials as defined in 49 CFR § 383.5 (49 CFR 383.5). The definition of CMV found at 49 CFR 390.5 of the FMCSRs is not applicable to this notice. (3) ''Commercial Driver's License (CDL) Driver'' means the operator of a CMV because such operators must possess a valid commercial driver's license (CDL) (Section 383.23(a)(2)). (4) ''Entry-level CDL Driver'' means a driver with less than one year of experience operating a CMV with a CDL (49 CFR 380.502(b)).

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance of functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: May 10, 2012.

**G. Kelly Leone,**

*Associate Administrator for Research and Information Technology.*

[FR Doc. 2012–11909 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2012–0043]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 16 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective May 17, 2012. The exemptions expire on May 19, 2014.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

#### Background

On March 27, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (77 FR 18302). The public comment period closed on April 26, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 16 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970

because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 16 applicants have had ITDM over a range of 1 to 44 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 27, 2012, **Federal Register** notice and they will not be repeated in this notice.

**Discussion of Comments**

FMCSA did not receive any comments in this proceeding.

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the 16 exemption applications, FMCSA exempts, Ross J. Brown (MI), Bert R. Duncan, Jr. (UT), John L. Frank (ID), DeVere E. Hansen (UT), Grant C. Huftalin, (IA), Steven M. Janczak (WI), Aaron L. Kreiser (MD), Mark S. Madsen (NE), James W. McClintock, III (AR), John W. Morrison (CA), Bruce V. Oppegard (MN), Edward L. Quinones, (IL), David L. Rice (ME), Wade D. Street (MT), Charles M. Sweat (VA) and Donald E. Towne (CT) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 9, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–11911 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2005–21254; FMCSA–2006–23773; FMCSA–2010–0050]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 3, 2012. Comments must be received on or before June 18, 2012.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1999–5748; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2005–21254; FMCSA–2006–23773;

FMCSA–2010–0050, using any of the following methods:

• *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• Fax: 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**FOR FURTHER INFORMATION CONTACT:**

Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 18 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dean R. Allen (OR)
James C. Askin (FL)
Ernie E. Black (NC)
Gary O. Brady (WV)
Stephen H. Goldcamp (OH)
Hazel L. Hopkins, Jr. (MD)
Wai F. King (IL)
Dennis E. Krone (IL)
Richard J. McKenzie, Jr. (MD)
Christopher J. Meerten (OR)
Craig W. Miller, (MO)
Robert J. Mohorter (NY)
James A.Mohr (MT)
Tommy L. Ray, Jr. (AL)
George S. Rayson (OH)
Kevin L. Routin (KY)
Lane L. Savoie (LA)
Raul R. Torres (CA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 64 FR 68195; 65 FR 20245; 65 FR 20251; 65 FR 45817; 65 FR 57230; 65 FR 77066; 66 FR 63289; 67 FR 17102; 67 FR 38311; 68 FR 1654; 69 FR 8260; 69 FR 17263; 69 FR 17267; 69 FR 26921; 69 FR 31447; 70 FR 7545; 70 FR 30999; 70 FR 46567; 71 FR 6826; 71 FR 16410; 71 FR 16902; 71 FR 27033; 72 FR 40359; 73 FR 11989; 73 FR 28186; 75 FR 14656; 75 FR19674; 75 FR 27623; 75 FR 28682). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 18, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and

31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 9, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2012–11912 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2011–0058; Notice 3]**

### Toyota Motor Corporation, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of Petition.

**SUMMARY:** Toyota Motor North America, Inc., on behalf of Toyota Motor Corporation,[1] and Toyota Manufacturing, Indiana, Inc.[2] (collectively referred to as ''Toyota''), has determined that certain model year 2011 Toyota Sienna multipurpose passenger vehicles (MPV) manufactured between January 3, 2011 and February 11, 2011, do not fully comply with paragraph S9.5(a)(3) of Federal Motor Vehicle Safety Standard (FMVSS) No. 225, *Child restraint anchorage systems.* Toyota filed an appropriate report dated March 17, 2011, pursuant to 49 CFR Part 573 *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Toyota has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on June 16, 2011 in the **Federal Register** (76 FR 35271). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2011–0058.''

For further information on this decision contact Mr. Ed Chan, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 493–0335, facsimile (202) 366–7002.

*Vehicles involved:* Affected are approximately 9,122 model year 2011 Toyota Sienna MPV's that were manufactured between January 3, 2011 and February 11, 2011.

*Noncompliance:* Toyota explains that the noncompliance is that the label identifying the location of the lower child restraint anchorages in some of the second row seats of the affected vehicles are located slightly outside the limits as stated within the requirements of paragraph S9.5(a)(3) of FMVSS No. 225.

Specifically, Toyota also explains that ''the potential deviation of the label location outside the requirement is very small. Toyota observed that in a detailed survey of a randomly selected subset involving 18 of these vehicles in which it found a deviation, the mean deviation was approximately +1.4 mm (i.e. 26.4 mm from the centerline); the maximum deviation observed was +2.5 mm (i.e. 27.5 mm from the centerline); and the standard deviation was only 0.5 mm. While a survey carried out by the seat supplier also supports Toyota's assertions that the potential deviation of the label location from the specified requirements is very small. In the supplier's survey of 240 labels on 120 seats, 3 labels were outside of the specifications of FMVSS No. 225. All 3 of those labels were measured at +1 mm beyond the specification, or 26 mm from the centerline.''

**Summary of Toyota's Analysis and Arguments**

Toyota stated its belief that although the lower child anchorage labels are outside the specified limits of this requirement that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) The measured deviations are very minor, and such a slight deviation is not noticeable to consumers and would not impair a consumer's ability to locate the lower anchorages.

(2) Paragraph S9.1 of FMVSS No. 225 requires that the length of the straight portion of the lower anchorage bar be a minimum of 25 mm. In the affected vehicles the length is 30 mm; the total length including the curved portions is 54 mm. As a result, even with greater deviations than noted above in label location, some part of the label would be over some part of the bar, making the bar easy to locate.

(3) The regulatory history of the provision allowing a ±25 mm lateral tolerance for the location of the center of the circular label further supports the argument that this noncompliance has no adverse safety consequences. As originally adopted, FMVSS No. 225 would have limited the lateral tolerance to ±12 mm. In response to a petition for reconsideration from vehicle manufacturers concerned that such a low tolerance would be difficult to meet due to process limitations and seat design features, NHTSA amended the standard to allow the current ±25 mm tolerance. 69 Fed Reg. 48818 (August 11, 2004). In doing so, The agency stated:

''* * * Moreover, the agency believes that increasing the tolerance to 25 mm will not significantly affect the consumers' ability to find the LATCH anchorages. While anchor bars are permitted to be as short as 25 mm in the straight portion of the bar, most are considerably longer. Even if a 25 mm bar were used, with a 25 mm tolerance from the center of the bar, the circle will be, at farthest, tangent to a longitudinal vertical plane tangent to the side of the anchorage bar. If a person were to probe the seat bight in the area directly under the marking circle, his or her finger would easily contact the bar. For bars that are greater than 25 mm in length, with a 25 mm tolerance a portion of the marking circle will always be over some part of the bar. In either situation, marking the circle with a 25 mm tolerance will adequately provide a visual reminder to consumers that the LATCH system is present and will help users locate and use the bars. Adopting the 25 mm tolerance will also

[1] Toyota Motor Corporation is a Japanese corporation that manufacturers and imports motor vehicles.

[2] Toyota Manufacturing, Indiana, Inc., is an Indiana corporation that manufactures motor vehicles.

harmonize FMVSS No. 225 with the comparable Transport Canada requirement.''

(4) The seat design is such that only one label at a seating position can be noncompliant. As the seat cover is constructed, the labels are secured to the fabric a specified distance apart that reflects the location of each pair of anchorages, and the labels are designed to be within the lateral tolerance of the standard.

(5) Information provided in the vehicle owner's manual further reduces any possibility of confusion when installing a child restraint. The instructions clearly advise the installer to recline the second row seat and widen the gap between the seat cushion and the seatback to expose the lower anchorages.

(6) The label locations are correct for the LATCH anchorage system located at the third row center seating position.[3]

(7) There have been no customer complaints, injuries, or accidents related to the deviation of the child restraint label location being slightly outside the limits of the requirement.

In addition, Toyota stated that the model year 2011 Sienna is sold by Toyota in both the United States and Canada and the subject noncompliance was reported to both NHTSA and Transport Canada at the same time. (In Canada, the applicable standard is CMVSS 210.2; it contains the same requirements as FMVSS No. 225). Transport Canada responded on March 23, indicating it concurs that ''there is no real or implied degradation to motor vehicle safety,'' and that no further action in Canada will be required.

In summation, Toyota believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision**

*Requirement Background:* The purpose for the locational requirements for the label identifying the location of the lower child restraint anchorage is to assure that the installer of a child restraint system is readily able to locate the appropriate lower child restraint anchorages.

*NHTSA's Analysis of Toyota's Reasoning*

After review of the subject petition NHTSA agrees with Toyota that the location of the subject lower child restraint anchorage is in-line with the nonconforming location of the lower child restraint anchorage label, and the Owner's manual provided with the vehicles includes a description of the location of the anchorages in sufficient detail to allow the person installing a child seat to readily locate the anchorage.

*NHTSA Conclusions*

NHTSA agrees with Toyota's assessment that while the location of the subject lower child restraint anchorage label is outside of the allowable tolerance relative to the location of the anchorage that this would not prevent the installer of a child restraint system from being readily able to locate the lower child restraint anchorage.

*Decision*

In consideration of the foregoing, NHTSA has decided that Toyota has met its burden of persuasion that the FMVSS No. 225 noncompliance in the vehicles identified in Toyota's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the vehicles that Toyota no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: May 10, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2012–11948 Filed 5–16–12; 8:45 am]

BILLING CODE 4910–59–P

[3] Toyota indicated that this LATCH anchorage is not required by the standard, but was voluntarily installed by Toyota.

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Actions on Special Permit Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on Special Permit Applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in February to April 2012. The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Dated: Issued in Washington, DC, on May 8, 2012.

**Donald Burger**

*Chief, Special Permits and Approvals Branch.*

| S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| **Modification Special Permit Granted** | | | |
| 8826–M ..... | Phoenix Air Group, Inc. Cartersville, GA. | 49 CFR 172.101; 172.204(c)(3); 173.27; 175.30(a)(1); 175.320(b). | To modify the special to reflect the current statutes and regulations changes. |

| S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| 14909–M | Lake Clark Air, Inc. Port Alsworth, AK. | 49 CFR 173.304(f) | To reissue the special permit originally issued on an emergency basis authorizing the transportation in commerce of compressed oxygen without rigid outer packaging when no other means of transportation exist. |
| 10656–M | Conference of Radiation Control Program Directors, Inc. Frankfort, KY. | 49 CFR 172.203(d); Part 172, Subparts C, D, E, F, G. | To modify the special permit add 49 CFR Part 172 Subpart I as it pertains to security plans to the list of regulations exempted in paragraph 4. |
| 11406–M | Conference of Radiation Control Program Directors, Inc. Frankfort, KY. | 49 CFR Part 172, Subparts C, D, E, F, G, H; Part 173, Subparts B, I; 173.22(a)(1); Part 174, Subpart K; 177.842. | To modify the special permit add 49 CFR Part 172 Subpart I as it pertains to security plans to the list of regulations exempted in paragraph 4. |
| 11670–M | Schlumberger Oilfield UK Plc Dyce, Aberdeen Scotland, Ab. | 49 CFR 178.36 | To modify the exemption to authorize the use of a newly designed non-DOT specification oil well sampling cylinder for the transportation of Division 2.1 materials. |
| 14193–M | Honeywell International, Inc. Morristown, NJ. | 49 CFR 173.313 | To reissue the exemption originally issued on an emergency basis for the transportation of non-DOT specification IMO Type 5 portable tanks, mounted in an ISO frame, containing certain Division 2.2 and 2.3 materials. |
| 10646–M | Schlumberger Technologies Corporation Sugar Land, TX. | 49 CFR 173.302 | To modify the special permit to authorize an additional material in the construction of non-DOT specification cylinders. |
| 14457–M | Amtrol Alfa Metalomecanica SA Portugal. | 49 CFR 173.304a(a)(1) | To modify the special permit to extend the external visual inspection to every five (5) years. |
| 14808–M | Amtrol, Inc. West Warwick, RI | 49 CFR 178.51(b), (f)(1) and (2) and (g). | To modify the special permit to authorize a longer time between requalification testing. |
| 14940–M | Crown Aerosol Packaging Philadelphia, PA. | 49 CFR 173.306 | To modify the special permit to authorize rail freight and cargo vessel as additional modes of transportation. |
| 13381–M | Carleton Technologies, Pressure Technology Division Westminster, MD. | 49 CFR 173.302(a)(1), 173.304(a), 175.3 and 180.205. | To modify the special permit to authorize an extended testing time period for cylinders which are past their retest date but are not empty. |
| 14616–M | Chlorine Service Company Kingwood, TX. | 49 CFR 178.245–1(a) | To modify the special permit to correct pressure ranges to bring it in line with other special permits issued. |
| 11215–M | Orbital Sciences Corporation Mojave, CA. | 49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109. | To modify the special permit to add a Class 9 material. |
| | | **New Special Permit Granted** | |
| 14951–N | Lincoln Composites Lincoln, NE. | 49 CFR 173.302a | To authorize the manufacture, marking, sale and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinders for the transportation of certain compressed gases. (modes 1, 2, 3) |
| 15458–N | Southern States LLC | 49 CFR 49 CFR Parts 171–181; 49 CFR 172.301(c); and 173.304. | To authorize the transportation in commerce of specially designed non-DOT specification cylinders containing compressed sulfur hexafluoride. (modes 1, 2, 3, 4) |
| 15451–N | NK CO., LTD Gangseo-Gu, Busan. | 49 CFR 180.209(a) and (b) | To authorize the transportation in commerce of certain DOT 3AA, 3AAX and 3T cylinders in Multiple Element Gas Containers that have been retested every ten (10) years instead of every five (5) years by acoustic emission and ultrasonic examination (AE/UE) in place of the internal visual inspection and the hydrostatic retest required by § 180.205. (modes 1, 2, 3) |
| 15452–N | BE Aerospace Lenexa, KS | 49 CFR 173.302(f)(2)(i) | To authorize the transportation in commerce of certain DOT Specification 39 cylinders containing oxygen that have their pressure relief devices set to an alternative burst at pressure range. (modes 4, 5) |
| 15516–N | Moog Inc. East Aurora, NY | 49 CFR Part 172, Subpart C | To authorize the transportation in commerce of certain waste hazardous materials between Moog plants without shipping paper documentation for less than one half mile by private motor vehicle. (mode 1) |
| 15517–N | Mountain West Helicopters, LLC Alpine, UT. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300 and 172.400. | To authorize the transportation in commerce of certain hazardous materials by external load in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4) |
| 15507–N | Yiwu Jinyu Machinery Factory Jiangwan Town, Yiwu City. | 49 CFR 173.304(d) | To authorize the manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container similar to a DOT 2Q for the transportation in commerce of certain Division 2.1 and 2.2 gases. (modes 1, 2, 3, 4) |
| 15509–N | The Virginia Commercial Space Flight Authority Norfolk, VA. | 49 CFR 173.301 and 173.302a. | To authorize the transportation in commerce of Helium in a non-DOT specification packaging for a short distance by motor vehicle. (mode 1) |

| S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| 15483–N ..... | United Space Alliance Houston, TX. | 49 CFR 173.302a ..... | To authorize the transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support the International Space Station Human Research Facility Gas Delivery System. (modes 1, 2, 3, 4, 5) |
| 15541–N ..... | T.L. Forest Products, Inc., dba Timberland Logging Ashland, OR. | 49 CFR 49 CFR Parts 172.101, Column(9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 172.400. | To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (mode 4) |
| 15532–N ..... | SET Environmental Inc. Wheeling, IL. | 49 CFR 173.244 ..... | To authorize the one-time, one-way transportation in commerce of one irregularly shaped sodium dispersion vessels in alternative packaging. (mode 1) |
| 15536–N ..... | WavesinSolids LLC State College, PA. | 49 CFR 173.302 and 180.209 | To authorize the transportation in commerce of certain cylinders which have been alternatively ultrasonically retested for use in transporting Division 2.1, 2,2 and 2.3 materials. (modes 1, 2, 3, 4, 5) |
| 15537–N ..... | Alaska Pacific Powder Company Watkins, CO. | 49 CFR 172.101 Column (9B) | To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4) |
| 15556–N ..... | Winco Inc. Aurora, OR ..... | 49 CFR 49 CFR Table 172.101, Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1) 172.200 and 172.301(c) and 175.75. | To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4) |
| 15560–N ..... | San Joaquin Helicopters Delano, CA. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, 172.400, 173.302(f)(3) and 175.75. | To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the U.S. without meeting certain hazard communication and stowage requirements. (mode 4) |
| 15535–N ..... | PM HELI–OPS, INC CENTRAL POINT, OR. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1). | To authorize the transportation in commerce of certain forbidden explosives in sling load operations in remote areas of the U.S. without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4) |
| 15233–N ..... | ExpressJet Airlines, Inc. Houston, TX. | 49 CFR 173.309, 172.301(c) .. | To authorize the transportation in commerce of certain non-DOT specification and DOT–4DA and 4DS specification cylinders, used as fire suppression systems in aircraft to be shipped, as fire extinguishers. (modes 1, 2, 3, 4, 5) |
| **Emergency Special Permit Granted** | | | |
| 15118–M ..... | Mystery Creek Resources Inc. McGrath, AK. | 49 CFR 172.101 Column (9B) | To add nitric acid to the table in paragraph 6 and also to authorize transportation from 3 additional airports. (mode 4) |
| 15418–N ..... | Southwest Airlines Dallas, TX | 49 CFR 172.301(c); 173.219(b)(1). | To authorize the transportation in commerce of life-saving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (modes 1, 4, 5) |
| 15467–N ..... | Dena'ina Air Taxi LLC Anchorage, AK. | 49 CFR 172.101 Column (9B) | To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4) |
| 15540–N ..... | Andrew Airways, Inc. Kodiak, AK. | 49 CFR 175.310(c) ..... | To authorize the transportation in commerce of certain non-DOT specification bulk packages containing Class 3 material by cargo aircraft where no other means of transportation is practicable. (mode 4) |
| 15551–N ..... | Zapata Incorporated Charlotte, NC. | 49 CFR 173.21(e) ..... | To authorize the transportation in commerce of a Division 4.1, Packing Group II material by highway, that has the potential to react during transportation. (mode 1) |
| 15584–N ..... | Pacific Bio-Material Management, Inc. d/b/a Pacific Scientific Transport Fresno, CA. | 49 CFR 173.196, 173.197(d)(3)(ii). | To authorize the transportation in commerce human and animal tissue samples in non-specification packaging. (mode 1) |
| 15562–N ..... | Crowley Petroleum Distribution, Inc. Anchorage, AK. | 49 CFR 172.101 Hazardous Materials Table Column (9B). | To authorize the transportation in commerce of propane by cargo only aircraft in packages that exceed the quantity limitation where no other means of transportation is available. (mode 4) |

| S.P. No. | Applicant | Regulation(s) | Nature of special permit thereof |
|---|---|---|---|
| **Modification Special Permit Withdrawn** | | | |
| 13336–M ..... | Renaissance Industries, Inc. Sharpsville Operations M–1102 Sharpsville, PA. | 49 CFR 173.302(a)(1); 173.304; 175.3. | To modify the special permit to authorize additional Division 2.2 gases. |
| 9168–M ..... | All-Pak Dangerous Goods, a Division of Berlin Packaging (Former Grantee All-Pak, Inc.) Bridgeville, PA. | 49 CFR Part 172; Subpart E; 173.118; 173.244; 173.345; 173.346; 173.359; 173.370; 173.377; 175.3; 175.33; 172.504; 173.3. | To modify the special permit to authorize an additional mode of transportation (cargo vessel.) |
| **New Special Permit Withdrawn** | | | |
| 15469–N ..... | B.J. Alan Company, Youngstown, OH. | 49 CFR 173.62 ..... | To authorize the transportation in commerce of certain fireworks in large packagings. (mode 1) |
| **Emergency Special Permit Withdrawn** | | | |
| 15053–N ..... | Department of Defense Scott Air Force Base, IL. | 49 CFR 173.302 and 173.304 | To authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in non-DOT specification packagings. (modes 1, 4) |
| **Denied** | | | |
| 12561–M ..... | Request by Rhodia, Inc. Cranbury, NJ February 15, 2012. To modify the special permit by amending Paragraph 7 to reflect existing AAR and 49 CFR construction specifications for DOT 111 tank cars. | | |
| 14872–N ..... | Request by Arkema, Inc. King of Prussia, PA March 05, 2012. To authorize the transportation in commerce of methyl mercaptan in certain DOT 105J300W tank cars. | | |
| 15317–N ..... | Request by The Dow Chemical Company PHILADELPHIA, PA March 05, 2012. To authorize the transportation in commerce of ethylene oxide in a DOT 105J400W tank car with a maximum gross rail load (GRL) not to exceed 286,000 pounds. | | |
| 15497–N ..... | Request by U.S. Department of Energy Washington, DC March 13, 2012. To authorize the transportation in commerce of radioactive materials without being subject to the requirements in 49 CFR 173.417(a)(1)(i). | | |
| 15503–N ..... | Request by Garden City Co-op, Inc. Garden City, KS March 05, 2012. To authorize the transportation in commerce of certain cargo tanks used as an implementation of husbandry with a capacity of 5,000 gallons containing anhydrous ammonia. | | |
| 15546–N ..... | Request by T. SCOTT DUNN CONSTRUCTION, INC. DBA Heli-Dunn Phoenix, OR February 01, 2012. To authorize the transportation in commerce of certain hazardous materials by external load in remote areas of the U.S. without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. | | |

[FR Doc. 2012–11659 Filed 5–16–12; 8:45 am]
BILLING CODE 4909–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Applications for Modification of Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Modification of Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

**DATES:** Comments must be received on or before June 1, 2012.

**ADDRESSES:** *Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 8, 2012.

**Donald Burger,**

*Chief, General Approvals and Permits.*

| Application number | Docket number | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| | | **Modification Special Permits** | | |
| 11054–M ..... | | Welker Inc. Sugar Land, TX. | 49 CFR 178.36 Subpart C | To modify the special permit to authorize the containment cylinder or salvage cylinder without the internal piston. |
| 11914–M ..... | | Cascade Designs, Inc. Seattle, WA. | 49 CFR 173.304(d)(3)(ii); 178.33. | To modify the special permit to authorize cargo only aircraft. |
| 15448–M ..... | | U.S. Department of Defense Scott AFB, IL. | 49 CFR 172.320, 173.51, 173.56, 173.57 and 173.58. | To modify the special permit to authorize interim hazard classification of Class 4 and 5 materials, and to alow that Ammunition and Explosives (AE) containing Class I may be classified as other than Class 1 dependent on the characteristics of the AE. |

[FR Doc. 2012–11657 Filed 5–16–12; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Application for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before June 18, 2012.

**ADDRESSES:** Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 08, 2012.

**Donald Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| | | **New Special Permits** | | |
| 15610–N ..... | | WavesinSolids LLC State College, PA. | 49 CFR 180.209, 180.209(a), 180.205(c)(f)(g)(i), 173.302a(b)(2)(3)(4)(5), 180.213, 180.519(a), 180.519(b)(c). | To authorize the transportation in commerce of certain gases in DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders. The cylinders (tubes) are retested by acoustic emission and ultrasonic examination (AE/UE) described in paragraph 7 below in place of the internal visual inspection and the hydrostatic retest required in § 180.205. (modes 1, 2, 3) |
| 15621–N ..... | | Pacific Consolidated Industries, LLC Riverside, CA. | 49 CFR 107.105(c), 173.302(f)(3)(4)(5), 175.501(e)(3). | To authorize the transportation in commerce of brass-lined filament wound cylinders identified as Mobile Oxygen Storage Tanks filled with certain Division 2.1 and 2.2 gases. (modes 1, 2, 3, 4, 5) |
| 15623–N ..... | | Ledwell and Son Enterprises, Inc. Texarkana, TX. | 49 CFR 173.202, 173.203, 173.241, 173.242. | To authorize the manufacture, marking, sale and use of multiple non-DOT specification containers, manifolded together within a frame and securely mounted on a truck chassis, for the transportation in commerce of the materials authorized by this special permit. (mode 1) |
| 15624–N ..... | | Desert Air Transport Anchorage, AK. | 49 CFR 172.101 Column (9B). | To authorize the transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available. (mode 4) |

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| 15626–N ..... | | EC Source Aviation, LLC Mesa, AZ. | 49 CFR 49 CFR Parts 172.101, Column (9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, and 172.400. | To authorize the transportation in commerce of certain hazardous materials by cargo aircraft including by external load in remote areas without being subject to hazard communication requirements and quantity limitations where no other means of transportation is available. (modes 3, 4) |
| 15628–N ..... | | E.I. du Pont de Nemours and Company, Wilmington, DE. | 49 CFR 179.100–12(c) .... | To authorize the transportation in commerce of hazardous material in tank cars with a manway housing which allows for opening from either of two sides. (mode 2) |
| 15631–N ..... | | Atlas Air, Inc. Miami, FL .. | 49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27 (b)(2)(3). | To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden, by cargo-only aircraft. (mode 4) |

[FR Doc. 2012–11655 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Notice of Delays in Processing of Special Permits Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

### Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit Applications.

### Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party to Exemption Request

Issued in Washington, DC, on May 1, 2012.

**Donald Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **Modification to Special Permits** | | | |
| 14372–M ..... | Kidde Aerospace and Defense, Wilson, NC ..... | 3 | 06–30–2012 |
| 10964–M ..... | Kidde Aerospace & Defense, Wilson, NC ..... | 3 | 07–31–2012 |
| 12706–M ..... | RAGASCO AS, Raufoss, NO ..... | 3 | 07–31–2012 |
| 11516–M ..... | The Testor Corporation, Rockford, IL ..... | 3 | 07–30–2012 |
| **New Special Permit Applications** | | | |
| 15080–N ..... | Alaska Airlines, Seattle, WA ..... | 1 | 06–30–2012 |
| 15393–N ..... | Savannah Acid Plant LLC, Savannah, GA ..... | 3 | 07–30–2012 |
| 15494–N ..... | Johnson Controls Battery Group, Inc., Milwaukee, WI ..... | 3 | 07–31–2012 |
| 15510–N ..... | TEMSCO Helicopters, Inc., Ketchikan, AK ..... | 3 | 07–30–2012 |
| 15334–N ..... | Floating Pipeline Company Incorporated, Halifax, Nova Scotia ..... | 3 | 07–30–2012 |
| **Party to Special Application** | | | |
| 14372–P ..... | L'Hotellier, France ..... | 3 | 07–30–2012 |
| 15284–P ..... | Honeywell International, Inc., Morristown, NJ ..... | 3 | 05–30–2012 |
| 11136–P ..... | Lantis Productions Inc., dba Lantis Fireworks & Lasers Draper, UT ..... | 3 | 06–30–2012 |
| **Renewal Special Permits Applications** | | | |
| 12283–R ..... | Interstate Battery of Alaska, Anchorage, AK ..... | 3 | 06–30–2012 |
| 9929–R ..... | Alliant Techsystems Operations LLC, (Former Grantee ATK Elkton) Elkton, MD ..... | 3 | 07–30–2012 |
| 11110–R ..... | United Parcel Services Company, Louisville, KY | 3 | 08–30–2012 |
| 14251–R ..... | INO Therapeutics/Ikaria,Port Allen, LA ..... | 3 | 07–31–2012 |

[FR Doc. 2012–11653 Filed 5–16–12; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 511 (Sub-No. 6X)]**

### Central Railroad Company of Indianapolis—Abandonment Exemption—in Howard County, IN

Central Railroad Company of Indianapolis (CERA) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 2.84 miles of rail line on its Tipton Industrial Lead, between mileposts 55.66 and 58.5 in Howard County, Ind.[1] The line traverses United States Postal Service Zip Code 46901.

CERA has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 16, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 29, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CERA's representative: Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CERA has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by May 22, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CERA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CERA's filing of a notice of consummation by May 17, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: May 10, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2012–11966 Filed 5–16–12; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 1090X]**

### City of Alameda d/b/a Alameda Belt Line Railroad—Abandonment Exemption—in Alameda County, CA

City of Alameda d/b/a Alameda Belt Line Railroad (ABL) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 2.61 miles of rail line between milepost 0.0 near the intersection of Clement Avenue and Broadway and milepost 2.61 near Constitution Way, in the City of Alameda, Alameda County, Cal. The line traverses United States Postal Service Zip Code 94501.

ABL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 16,

[1] By notice served and published in the **Federal Register** on July 22, 2010, CERA obtained authority to abandon the subject line in *Central Railroad Co. of Indianapolis—Abandonment Exemption—in Howard County, Ind.,* AB 511 (Sub-No. 5X) (STB served July 22, 2010). That abandonment authority expired without CERA consummating the abandonment, and CERA has since treated the entire line as an active line of railroad. CERA Letter, *Cent. R.R. Co. of Indianapolis—Aban. Exemption—in Howard Cnty., Ind.,* AB 511 (Sub-No. 5X) (filed July 28, 2011).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 29, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to ABL's representative: Charles H. Montange, 426 NW 162nd St., Seattle, WA 98177.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

ABL has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by May 22, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), ABL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by ABL's filing of a notice of consummation by May 17, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: May 9, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2012–11976 Filed 5–16–12; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 14, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before June 18, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0430.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).

*Form:* 4810.

*Abstract:* Form 4810 is used to request a prompt assessment under IRC Section 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 24,800.

*OMB Number:* 1545–1018.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* TD 8366 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; TD 8431 (Final) Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

*Abstract:* The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

*Affected Public:* Private Sector: Not-for-profits institutions.

*Estimated Total Burden Hours:* 978.

*OMB Number:* 1545–1231.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* TD 9436—Tax Return Preparer Penalties Under Section 6694 and 6695 (Final Regulations); TD 8382—Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

*Abstract:* This information is necessary to make the record of the name, taxpayer identification number, and principal place of work of each tax return preparer, make each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under section 6694. These regulations implements amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The final regulation affects tax return preparers and provides guidance regarding the amended provisions.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 10,679,320.

*OMB Number:* 1545–1290.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* TD 8513—Bad Debt Reserves of Banks.

*Abstract:* Section 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific

charge off method of accounting for bad debts. The information required by § 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with § 585(c).

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 625.

*OMB Number:* 1545–1514.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* REG–209040–88 (NPRM), Qualified Electing Fund Elections.

*Abstract:* The regulations permit certain shareholders to make a special section 1295 election with respect to certain preferred shares of a PFIC. Taxpayers must indicate the election on a Form 8621 and attach a statement containing certain information and representations. Form 8621 must be filed annually. The shareholder also must obtain, and retain a copy of, a statement from the corporation as to its status as a PFIC.

*Affected Public:* Individuals or Households.

*Estimated Total Burden Hours:* 600.

*OMB Number:* 1545–1954.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Health Coverage Tax Credit Registration Update Form.

*Form:* 13704.

*Abstract:* Internal Revenue Code Sections 35 and 7527 enacted by public law 107–210 require the Internal Revenue Service to provide payments of the HCTC to eligible individuals beginning August 1, 2003. The IRS will use the Registration Update Form to ensure, that the processes and communications for delivering these payments help taxpayers determine if they are eligible for the credit and understand what they need to do to continue to receive it.

*Affected Public:* Individuals or Households.

*Estimated Total Burden Hours:* 1,100.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–11935 Filed 5–16–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 14, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before June 18, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

### Alcohol and Tobacco Tax and Trade Bureau (TTB)

*OMB Number:* 1513–0103.

*Type of Review:* Revision a currently approved collection.

*Title:* Tobacco Bond—Collateral, Tobacco Bond—Surety, and Tobacco Bond.

*Form:* TTB F 5200.25, 5200.26, 5200.29.

*Abstract:* TTB requires a corporate surety bond or a collateral bond to ensure payment of the excise tax on tobacco products (TP) and cigarette paper and tubes (CP&T) removed from the factory or warehouse. These TTB forms identify the agreement to pay and the person from which TTB will attempt to collect any unpaid excise tax. Manufactures of TP or CP&T, export warehouse proprietors, and corporate sureties, if applicable, are the respondents for these forms.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 111.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–11985 Filed 5–16–12; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket No. OCC–2012–0004]**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1421]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Supervisory Guidance on Stress Testing for Banking Organizations With More Than $10 Billion in Total Consolidated Assets

**AGENCY:** Board of Governors of the Federal Reserve System (''Board'' or ''Federal Reserve''); Federal Deposit Insurance Corporation (''FDIC''); Office of the Comptroller of the Currency, Treasury (''OCC'').

**ACTION:** Final supervisory guidance.

**SUMMARY:** The Board, FDIC and OCC, (collectively, the ''agencies'') are issuing this guidance, which outlines high-level principles for stress testing practices, applicable to all Federal Reserve-supervised, FDIC-supervised, and OCC-supervised banking organizations with more than $10 billion in total consolidated assets. The guidance highlights the importance of stress testing as an ongoing risk management practice that supports a banking organization's forward-looking assessment of its risks and better equips the organization to address a range of adverse outcomes.

**DATES:** This guidance will become effective on July 23, 2012.

**FOR FURTHER INFORMATION CONTACT:**

*Board:* Constance M. Horsley, Manager, Capital and Regulatory Policy (202) 452–5239, David Palmer, Senior Supervisory Analyst, Risk Section, (202) 452–2904, or Sean Healey, Financial Analyst, Capital and Regulatory Policy, (202) 912–4611, Division of Banking Supervision and Regulation; or Benjamin W. McDonough, Senior Counsel, (202) 452–2036, Christine E. Graham, Senior Attorney, (202) 452–3005, or Dominic A. Labitzky, Senior Attorney, (202) 452–3428, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

*FDIC:* George French, Deputy Director, Policy, (202) 898–3929; Robert Burns, Associate Director, Division of Risk Management Supervision, (202) 898–3905; Karl Reitz, Senior Capital Markets Specialist, (202) 898–6775, Division of Risk Management Supervision; or Mark Flanigan, Counsel,

(202) 898–7426; Ryan Clougherty, Senior Attorney, (202) 898–3843, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*OCC:* Darrin Benhart, Deputy Comptroller, Credit and Market Risk, (202) 874 1711, Robert Scavotto, Lead International Expert, International Analysis and Banking Condition (202) 874–4943, Tanya Smith, NBE, Lead Expert for Regulatory Capital and Operational Risk, Large Bank Supervision (202) 874–4464, Akhtarur Siddique, Deputy Director, Enterprise Risk Analysis Division (202) 874–4665, or Alexandra Arney, Attorney, Legislative and Regulatory Activities Division (202) 874–6104, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 15, 2011, the agencies requested public comment on joint proposed guidance on the use of stress testing as an ongoing risk management practice by banking organizations with more than $10 billion in total consolidated assets (the proposed guidance).[1] The public comment period on the proposed guidance closed on July 29, 2011. The agencies are adopting the guidance in final form with certain modifications that are discussed below (the final guidance). As described below, this guidance does not apply to banking organizations with consolidated assets of $10 billion or less.

All banking organizations should have the capacity to understand their risks and the potential impact of stressful events and circumstances on their financial condition.[2] The agencies have previously highlighted the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.[3] The 2007–2009 financial crisis further underscored the need for banking organizations to incorporate stress testing into their risk management, as banking organizations unprepared for stressful events and circumstances can suffer acute threats to their financial condition and viability.[4] The final guidance is intended to be consistent with sound industry practices and with international supervisory standards.[5]

Building upon previously issued supervisory guidance that discusses the uses and merits of stress testing in specific areas of risk management, the final guidance provides principles that a banking organization should follow when conducting its stress testing activities. The guidance outlines broad principles for a satisfactory stress testing framework and describes the manner in which stress testing should be employed as an integral component of risk management that is applicable at various levels of aggregation within a banking organization and that contributes to capital and liquidity planning. While the guidance is not intended to provide detailed instructions for conducting stress testing for any particular risk or business area, the guidance describes several types of stress testing activities and how they may be most appropriately used by banking organizations subject to this guidance.

The final guidance does not implement the stress testing requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) on financial companies regulated by the OCC, FDIC, or Board with total consolidated assets of more than $10 billion or by the Board's capital plan rule on U.S. bank holding companies with total consolidated assets equal to or greater than $50 billion.[6] The Dodd-Frank Act's stress testing requirements are being implemented through separate notices of proposed rulemaking by the respective agencies.[7] The Board issued the final capital plan rule on November 22, 2011. In light of these recent rulemaking efforts on stress testing, the guidance provides banking organizations with principles for conducting their stress testing activities to, among other things, ensure that those activities are adequately integrated into overall risk management.[8] The agencies expect such companies would follow the principles set forth in the guidance—as well as other relevant supervisory guidance—when conducting stress testing in accordance with statutory or regulatory requirements.[9]

## II. Discussion of Comments on the Proposed Guidance

The agencies received 17 comment letters on the proposed guidance. Commenters included financial trade associations, bank holding companies, financial advisory firms, and individuals. Commenters generally expressed support for the proposed guidance. However, several commenters recommended changes to, or clarification of, certain provisions of the proposed guidance, as discussed below. In response to these comments, the agencies have clarified the principles set forth in the guidance and modified the proposed guidance in certain respects as described in this section.

[1] *See* 76 FR 35072 (June 15, 2011).

[2] For purposes of this guidance, the term ''banking organization'' means national banks, federal savings associations, and federal branches and agencies supervised by the OCC; state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Federal Reserve is the primary federal supervisor; and state nonmember banks, and all other institutions for which the FDIC is the primary federal supervisor.

[3] *See, e.g.,* Supervision and Regulation Letter SR 10–6, OCC Bulletin 2010–13 or FDIC Financial Institution Letter (FIL) 13–2010, *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 17, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm;* Supervision and Regulation Letter SR 10–1, OCC Bulletin 2010–1 or FDIC FIL–2–2010, *Interagency Advisory on Interest Rate Risk* (January 11, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm;* Supervision and Regulation Letter SR 09–4, *Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies* (revised March 27, 2009), available at *http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm;* Supervision and Regulation Letter SR 07–1, OCC Bulletin 2006–46 or FDIC FIL–104–2006, *Interagency Guidance on Concentrations in Commercial Real Estate* (January 4, 2007), available at *http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* Supervision and Regulation Letter SR 01–4, OCC Bulletin 2001–6 or FDIC FIL–9–2001, *Subprime Lending* (January 31, 2001), available at *http://www.federalreserve.gov/boarddocs/srletters/2001/SR0104.htm;* Supervision and Regulation Letter SR 99–18, *Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles* (July 1, 1999), available at *http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918; Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework,* 73 FR 44620 (July 31, 2008); *The Supervisory Capital Assessment Program: Overview of Results (May 7, 2009),* available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf; Comprehensive Capital Analysis and Review: Objectives and Overview* (March 18, 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf;* and 12 CFR 225.8.

[4] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376) requires financial organizations with more than $10 billion in total consolidated assets to conduct a stress test at least annually. *See generally* 12 U.S.C. 5365(i)(2).

[5] *See* Basel Committee on Banking Supervision, *Principles for Sound Stress Testing Practices and Supervision* (May 2009), available at *http://www.bis.org/publ/bcbs155.pdf.*

[6] *See* 12 CFR 225.8.

[7] *See* Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 FR 594 (Jan. 5, 2012) (Board); Annual Stress Test, 77 FR 3408 (Jan. 24, 2012) (OCC); Annual Stress Test, 77 FR 3166 (Jan. 23, 2012) (FDIC).

[8] As described below, the agencies believe that $10 billion is the appropriate threshold based on the general complexity of firms above this size.

[9] To the extent that the guidance conflicts with the requirements imposed with respect to any future statutory or regulatory stress test, banking organizations must comply with the requirements set forth in the relevant statute or regulation.

*A. Scope of Application*

The proposed guidance would have applied to all banking organizations supervised by the agencies with more than $10 billion in total consolidated assets. Specifically, with respect to the OCC, these banking organizations would have included national banking associations and federal branches and agencies; with respect to the Board, these banking organizations would have included state member banks, bank holding companies, and all other institutions for which the Board is the primary federal supervisor; with respect to the FDIC, these banking organizations would have included state nonmember banks and all other institutions for which the FDIC is the primary federal supervisor. The proposed guidance indicated that a banking organization should develop and implement its stress testing framework in a manner commensurate with its size, complexity, business activities, and overall risk profile.

Some commenters supported the total consolidated asset threshold (i.e., more than $10 billion), but others noted the importance and value of stress testing for smaller banking organizations. Consistent with the proposed guidance, no supervised banking organization with $10 billion or less in total consolidated assets is subject to this final guidance. The agencies believe that $10 billion is the appropriate threshold for the guidance based on the general complexity of firms above this size. However, the agencies note that previously issued supervisory guidance applicable to all supervised institutions discusses the use of stress testing as a tool in certain aspects of risk management—such as for commercial real estate concentrations, liquidity risk management, and interest-rate risk management. The agencies received two comments suggesting that the $10 billion total consolidated asset threshold be measured over a four-quarter period in order to minimize the likelihood that temporary asset fluctuations would trigger application of the guidance. The agencies do not establish an asset calculation methodology in the final guidance; however, banking organizations with assets near the threshold should use reasonable judgment and consider, in conjunction with their primary federal supervisor as appropriate, whether they should consider preparing to follow the guidance.

Three commenters expressed concern that foreign banking organizations (FBOs) are required to follow stress testing guidelines established by their home country supervisors and suggested that the agencies give consideration to those requirements. When developing the guidance, the agencies sought to ensure that it would not introduce inconsistencies with internationally agreed supervisory standards. The agencies recognize that an FBO's U.S. operations are part of the FBO's global enterprise subject to requirements of its home country. The agencies provided sufficient flexibility in the proposed guidance so that the guidance could apply to various types of organizations. In this final guidance, the agencies clarify that certain aspects of the guidance may not apply to U.S. branches and agencies of FBOs (such as the portions related to capital stress testing) or may apply differently (such as portions related to governance and controls). Supervisors will take these issues into consideration when evaluating the ability of U.S. offices of FBOs to meet the principles in the guidance.

Two commenters expressed concern regarding the application of the proposed guidance to savings and loan holding companies (SLHCs). They suggested that the Board issue separate guidance for SLHCs, as these institutions would face a different set of stress testing assumptions and scenarios than banking organizations. The Board believes that the guidance is instructive to SLHCs to the same degree it is for bank holding companies. The Federal Reserve became the primary federal supervisor for SLHCs on July 21, 2011, after the agencies published the proposed guidance for public comment but before the end of the comment period. While the Board recognizes that certain differences do exist between bank holding companies and SLHCs, the Board believes the guidance contains flexibility adequate to accommodate the variations in size, complexity, business activities, and overall risk profile of all banking organizations that meet the asset threshold. Thus, the guidance anticipates that each banking organization, including each SLHC, would implement stress testing in a manner consistent with its own business and risk profile.[10]

Similarly, one commenter advocated that the OCC propose separate guidance on stress testing specifically tailored to savings associations. The OCC became the primary federal supervisor for federal savings associations on July 21, 2011. While the OCC recognizes that certain differences do exist between national banks and federal savings associations, the OCC notes that the final guidance contains flexibility adequate to accommodate the variations in size, complexity, business activities, and overall risk profile of all banking organizations that meet the asset threshold. Thus, it is also expected that each federal savings association would implement the guidance consistent with its own business and risk profile.

Several commenters requested clarification on the linkage between the stress testing guidance and the stress testing requirements in the Dodd-Frank Act. In devising the guidance, the agencies endeavored to ensure that the proposed and final guidance is consistent with the stress testing requirements under the Dodd-Frank Act and believe that the principles set forth in the final guidance are useful when conducting the stress tests required under the Act. Notably, the final guidance was framed broadly to inform a banking organization's use of stress testing in overall risk management, not just stress tests required under the Dodd-Frank Act. Dodd-Frank stress tests would generally be considered part of an organization's overall stress testing framework as described in the stress testing guidance.[11]

*B. Stress Testing Principles*

As noted above, the proposed guidance identified and included a discussion of four key principles for a banking organization's stress testing framework and related stress test results, namely that: (1) A banking organization's stress testing framework should include activities and exercises that are tailored to and sufficiently capture the banking organization's exposures, activities, and risks; (2) an effective stress testing framework employs multiple conceptually sound stress testing activities and approaches; (3) an effective stress testing framework is forward-looking and flexible; and (4) stress test results should be clear, actionable, well supported, and inform decision-making. In the final guidance, the agencies have incorporated a fifth principle specifying that an organization's stress testing framework should include strong governance and effective internal controls. The elements of the fifth principle had been set forth in section VI of the proposed guidance, and the fifth principle does not expand on this aspect of the proposed guidance. Rather, the agencies reorganized this discussion into a fifth principle in order to underscore the importance of

[10] *See* Supervision and Regulation Letter SR 11–11, *Supervision of Savings and Loan Holding Companies (SLHCs)* (July 21, 2011), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1111.pdf.*

[11] *See supra* note 8.

governance and controls as a key element in a banking organization's stress testing framework.

As noted above, commenters were supportive of the principles-based approach and the notion that a banking organization's stress testing framework should be implemented in a manner commensurate with factors such as the complexity and size of the organization. With more specific regard to the proposed principles, commenters suggested that the final guidance address the standardization of stress testing through the inclusion of common coefficients, models, or benchmarks. These commenters expressed concerns that banking organizations would implement the principles inconsistently and that standardization would help regulators conduct comparative analyses across firms. Another commenter suggested that the agencies prescribe more detailed and integrated stress testing between different entities or business units within an organization.

The agencies did not modify the guidance in response to these comments. A key aspect of the guidance is to provide organizations flexibility on how they design their individual stress testing frameworks. Thus, each banking organization should design a specific stress testing framework to capture risks relevant to the organization. The agencies believe that prescribing standardized stress tests in this guidance would have its own inherent limitations and may not appropriately cover a banking organization's material risks and activities.

In addition, commenters suggested that the agencies mandate public release of stress testing results through the guidance. The agencies have considered these comments, but do not believe the final guidance is the appropriate place for such a requirement given its broader focus on banking organizations' overall stress testing frameworks. The agencies note, however, that banking organizations may be required to disclose information about their stress tests pursuant to other statutory, regulatory, or supervisory requirements.

A few commenters stated that a banking organization should explain and justify the stress testing methodologies it utilizes to its primary federal supervisor. The agencies note that supervisors will examine firms' stress testing methodologies through the supervisory process. One commenter noted that the guidance should explicitly indicate that liabilities should be part of a banking organization's stress testing activities; the agencies intended that stress testing activities would take an organization's liabilities into account and have clarified this in the final guidance. Three commenters suggested that operational risk be specifically referenced in the guidance. In response, the agencies have clarified in the final guidance that operational risk should be among the risks considered by an organization's stress testing framework.

Another commenter expressed concern that the frequency of stress testing and communication of results might eventually desensitize senior management to them. The agencies believe that regular review of stress test results is useful—both during periods of economic downturn and benign periods—and have clarified that such review can help a banking organization track over time the impact of ongoing business activities, changes in exposures, varying economic conditions, and market movements on its financial condition. Aside from the inclusion of a fifth principle as described above, the agencies have otherwise adopted the proposed principles in the final guidance with only minor additional refinements.

*C. Stress Testing Approaches and Applications*

The proposed guidance described certain stress testing approaches and applications—scenario analysis, sensitivity analysis, enterprise-wide testing, and reverse stress testing—that a banking organization could consider using within its stress testing framework, as appropriate. The proposed guidance provided that each banking organization should apply these approaches and applications commensurate with its size, complexity, and business profile, and may not need to incorporate all of the details described in the guidance.

Some commenters questioned the appropriate number and types of stress test approaches an organization should utilize. The agencies do not believe that specifying a number or particular types of approaches—including the number of scenarios—is appropriate in the guidance given the wide range of stress testing activities that different banking organizations may undertake. A banking organization should choose the approaches that appropriately consider the unique characteristics of that particular organization and the relevant risks it faces. The agencies expect that stress testing methodologies will evolve over time as banking organizations develop approaches that best capture their individual risk profiles.

In addition, the proposed guidance described reverse stress testing as a tool that would allow a banking organization to assume a known adverse outcome, such as suffering a credit loss that causes it to breach a minimum regulatory capital ratio or suffering severe liquidity constraints making it unable to meet its obligations, and then deduce the types of events that could lead to such an outcome. This type of stress testing may help a banking organization to consider scenarios beyond its normal business expectations and see the impact of severe systemic effects on the banking organization. It also would allow a banking organization to challenge common assumptions about its performance and expected mitigation strategies.

Three commenters expressed doubts regarding the effectiveness of reverse stress testing, as the approach could produce results of questionable value and captures unlikely, ''extreme'' scenarios. The agencies reiterate the value of reverse stress testing, as it helps a banking organization evaluate the combined effect of several types of extreme events and circumstances that might threaten the survival of the banking organization, even if in isolation each of the effects might be manageable. Another commenter expressed concern that the results of severe scenarios used for reverse stress testing would directly lead to a supervisory requirement to raise capital if the results of the approach were unfavorable to the organization. In addition, some commenters sought clarification that results would not be used by regulators to criticize banking organizations.

As stated in the proposed guidance, a given stress test result will not necessarily lead to immediate action by a firm, and in some cases stress test results—including those from reverse stress tests—are most useful for the additional information they provide. In terms of supervisory responses to an organization's stress testing activities, the agencies expect to consider a banking organization's stress test results and the appropriateness of its overall stress testing framework, along with all other relevant information, in assessing a banking organization's risk management practices, as well as its capital and liquidity adequacy. The guidance sets forth supervisory expectations for prudent risk management practices and a firm's decision not to follow the principles in this guidance will be examined as part of the supervisory process and may be cited as evidence of unsafe and unsound practices.

*D. Stress Testing For Assessing Adequacy of Capital and Liquidity*

Given the importance of capital and liquidity to a banking organization's viability, stress testing should be applied to these two areas on a regular basis. Stress testing for capital and liquidity adequacy should be conducted in coordination with a banking organization's overall business strategy and annual planning cycles. Results should be refreshed in the event of major strategic decisions, or other changes that can materially impact capital or liquidity.

An effective stress testing framework should explore the potential for capital and liquidity problems to arise at the same time or exacerbate one another. A banking organization's liquidity stress analysis should explore situations in which the banking organization may be operating with a capital position that exceeds regulatory minimums, but is nonetheless viewed within the financial markets or by its counterparties as being of questionable viability. For its capital and liquidity stress tests, a banking organization should articulate clearly its objectives for a post-stress outcome, for instance to remain a viable financial market participant that is able to meet its existing and prospective obligations and commitments.

In response to comments received on the planning horizon for stress tests, the agencies clarified that while capital stress tests should generally be conducted with a horizon of at least two years, organizations should recognize that the effects of certain stress conditions could extend beyond that horizon. The agencies have also clarified, in response to comments, that consolidated stress tests should account for the fact that certain legal entities within the consolidated organization are required to meet regulatory capital requirements.

A commenter requested clarification on whether capital and liquidity stress testing should be evaluated in unified or separate stress tests. The proposed guidance did not specify the precise manner in which capital and liquidity stress tests should be performed. The final guidance notes that assessing the potential interaction of capital and liquidity can be challenging and may not be possible within a single stress test, so a banking organization should explore several avenues to assess that interaction. In any case, the agencies believe that stress testing for both liquidity and capital adequacy should be an integral part of a banking organization's stress testing framework.

*E. Governance and Controls*

As noted under the new fifth principle of the final guidance, a banking organization's stress testing framework will be effective only if it is subject to strong governance and controls to ensure that the framework functions as intended. Strong governance and controls also help ensure that the framework contains core elements, from clearly defined stress testing objectives to recommended actions. Importantly, strong governance provides critical review of elements of the stress testing framework, especially regarding key assumptions, uncertainties, and limitations. A banking organization should ensure that the stress testing framework is not isolated within a banking organization's risk management function, but is firmly integrated into business lines, capital and asset-liability committees, and other decision-making bodies.

As part of their overall responsibilities, a banking organization's board and senior management should establish a comprehensive, integrated and effective stress testing framework that fits into the broader risk management of the banking organization. Stress testing results should be used to inform the board about alignment of the banking organization's risk profile with the board's chosen risk appetite, as well as inform operating and strategic decisions. Stress testing results should be considered directly by the board and senior management for decisions relating to capital and liquidity adequacy. Senior management, in consultation with the board, should ensure that the stress testing framework includes a sufficient range of stress testing activities applied at the appropriate levels of the banking organization (i.e., not just one enterprise-wide stress test).

Several commenters raised concerns regarding the proposed responsibilities of a banking organization's board of directors with respect to stress tests and the framework. One commenter believed that the board of directors should not review all stress test results, but rather only those that were expected to have a material impact on the overall organization. Another commenter expressed the belief that the board of directors should be involved in providing direction and oversight regarding the banking organization's stress testing framework, but that the board of directors should not be expected to be involved directly in more operational aspects of the framework.

The agencies have modified the final guidance to clarify that senior management, not the board of directors, should have the primary responsibility for stress testing implementation and technical design. However, the agencies emphasize that a banking organization's board of directors should be provided with information from senior management on stress testing developments (including the process to design tests and develop scenarios) and on stress testing results (including from individual tests, where material). As a general matter, the board of directors is also responsible for monitoring effectiveness of the overall framework, and using the results to inform their decision-making process.

In addition, the final guidance specifies that senior management should, in consultation with the board of directors, review stress testing activities and results with an appropriately critical eye to ensure that there is objective review and that the stress testing framework includes a sufficient range of stress testing activities applied at the appropriate levels of the banking organization. Finally, in response to comments, the agencies have clarified that a banking organization's minimum annual review and assessment of the effectiveness of their stress testing framework should ensure that stress testing coverage is comprehensive, tests are relevant and current, methodologies are sound, and results are properly considered.

## IV. Administrative Law Matters

*A. Paperwork Reduction Act Analysis*

In accordance with the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the agencies reviewed the final guidance. The agencies may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. While the guidance is not being adopted as a rule, the agencies determined that certain aspects of the guidance may constitute a collection of information and, therefore, believed it was helpful to publish a burden estimate with the guidance. In particular, the aspects of the guidance that may constitute an information collection are the provisions that state a banking organization should (i) have a stress testing framework that includes clearly defined objectives, well-designed scenarios tailored to the banking organization's business and risks, well-documented assumptions, conceptually

sound methodologies to assess potential impact on the banking organization's financial condition, informative management reports, and recommended actions based on stress test results; and (ii) have policies and procedures for a stress testing framework. The agencies estimated that the above-described information collections included in the guidance would take respondents, on average, 260 hours each year. The frequency of information collection is estimated to be annual. Respondents are banking organizations with more than $10 billion in total consolidated assets, as defined in the guidance.

The agencies received three comment letters regarding the paperwork burden of the guidance, stating that implementation will require a multiple of the 260 estimated hours. The agencies emphasize that the guidance does not implement the stress testing requirements imposed by the Dodd-Frank Act [12] or the Board's capital plan rule,[13] and does not otherwise impose mandatory stress testing requirements. The burden of information collections associated with mandatory stress tests will be accounted for in the respective rules that implement those requirements. In addition, the agencies believe that in some respects, the information collection elements of this guidance augment certain expectations that already are in place relative to certain existing supervisory guidance. The burden estimates for this guidance take into consideration only those collections of information, such as documentation of policies and procedures and relevant reports, that are specific to this guidance. Based on these factors, the agencies believe the burden estimates included in the proposed guidance continue to be appropriate.

*Title:* Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance.

*Frequency of Response:* Annual.

*Affected Public:* Banking organizations with more than $10 billion in total consolidated assets.

OCC:

*OMB Control No:* To be assigned by OMB.

*Estimated Number of Respondents:* 62.

*Estimated Time per Response:* 260 hours.

*Estimated Total Annual Burden Hours:* 16,120 hours

Board:

*Agency Information Collection Number:* FR 4202.

*OMB Control No:* To be assigned by OMB.

*Estimated Number of Respondents:* 154.

*Estimated Time per Response:* 260 hours.

*Estimated Total Annual Burden Hours:* 40,040 hours.

FDIC:

*OMB Control No:* To be assigned by OMB.

*Estimated Number of Respondents:* 25.

*Estimated Time per Response:* 260 hours.

*Estimated Total Annual Burden Hours:* 6500 hours.

OCC: For purposes of the PRA, this information collection will be titled Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance.

This information collection is authorized pursuant to the National Bank Act, (12 U.S.C. 1 *et seq.;* 12 U.S.C. 161) and the International Banking Act (12 U.S.C. 3101 *et seq.*). The OCC expects to review the policies and procedures for stress testing as part of its supervisory process. To the extent the OCC collects information during an examination of a banking organization, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552(b)(8).

Board: For purposes of the PRA, this information collection will be titled Recordkeeping and Disclosure Provisions Associated With Stress Testing Guidance. The agency form number for the collection is FR 4202. The agency control number for this new collection will be assigned by OMB.

This information collection is authorized pursuant to sections 11(a), 11(i), 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 248(i), 602, and 611), section 5 of the Bank Holding Company Act (12 U.S.C. 1844), and section 7(c) of the International Banking Act (12 U.S.C. 3105(c)). The Board expects to review the policies and procedures for stress testing as part of the Board's supervisory process. To the extent the Board collects information during an examination of a banking organization, the confidentiality of any such information submitted to the Board will be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)(8)) Board's Rules Regarding Availability of Information (12 CFR part 261).

FDIC: For purposes of the PRA, this information collection will be titled Recordkeeping and Disclosure Provisions Associated With Stress Testing Guidance.

This information collection is authorized pursuant to the Federal Deposit Insurance Act, (12 U.S.C. 1811 *et seq.*) and the International Banking Act (12 U.S.C. 3101 *et seq.*). The FDIC expects to review the policies and procedures for stress testing as part of its supervisory process. To the extent the FDIC collects information during an examination of a banking organization, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552(b)(8).)

The agencies have a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 250 E Street SW., Washington, DC 20219, by electronic mail to *regs.comments@occ.treas.gov,* or by fax to (202) 874–5274; Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551; Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429; and to the Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*B. Regulatory Flexibility Act Analysis*

Board:

While the guidance is not being adopted as a rule, the Board has considered the potential impact of the guidance on small banking organizations in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the final guidance will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

For the reason discussed in the Supplementary Information above, the Board is issuing the guidance to emphasize the importance of stress testing as an ongoing risk management practice to support a banking organization's forward-looking assessment of risks in order to better equip such organization to address a range of adverse outcomes. The guidance provides broad principles a banking organization should follow in conducting its stress testing activities, such as ensuring that those activities fit into the organization's overall risk management program. The guidance outlines broad principles for a

[12] 77 FR 594 (January 5, 2012).

[13] (Reg Y–13; OMB No. 7100–0342).

satisfactory stress testing framework, and describes the manner in which a banking organization should employ stress testing as an integral component of risk management.

Under regulations issued by the Small Business Administration (''SBA''), a small banking organization is defined as a banking organization with total assets of $175 million or less. *See* 13 CFR 121.201. The final guidance applies to banking organizations supervised by the agencies with more than $10 billion in total consolidated assets, including state member banks, bank holding companies, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations. Banking organizations that are subject to the guidance therefore substantially exceed the $175 million total asset threshold at which a banking organization is considered a small banking organization under SBA regulations. In light of the foregoing, the Board does not believe that the guidance has a significant economic impact on a substantial number of small entities.

## V. Final Supervisory Guidance

The text of the final supervisory guidance is as follows:

**Office of the Comptroller of the Currency**

**Federal Reserve System**

**Federal Deposit Insurance Corporation**

**Guidance on Stress Testing for Banking Organizations With Total Consolidated Assets of More Than $10 Billion**

## I. Introduction

All banking organizations should have the capacity to understand fully their risks and the potential impact of stressful events and circumstances on their financial condition. The U.S. federal banking agencies have previously highlighted the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures.[1] The 2007–2009 financial crisis underscored the need for banking organizations to incorporate stress testing into their risk management practices, demonstrating that banking organizations unprepared for stressful events and circumstances can suffer acute threats to their financial condition and viability.[2] The Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (collectively, the ''agencies'') are issuing this guidance to emphasize the importance of stress testing as an ongoing risk management practice that supports banking organizations' forward-looking assessment of risks and better equips them to address a range of adverse outcomes.

This joint guidance is applicable to all institutions supervised by the agencies with more than $10 billion in total consolidated assets. Specifically, with respect to the OCC, these banking organizations include national banking associations, federal savings associations, and federal branches and agencies; with respect to the Board, these banking organizations include state member banks, bank holding companies, savings and loan holding companies, and all other institutions for which the Federal Reserve is the primary federal supervisor; with respect to the FDIC, these banking organizations include state nonmember banks, state savings associations and insured branches of foreign banks.[3]

The guidance does not apply to any supervised institution below the designated asset threshold. Certain other existing supervisory guidance that applies to all supervised institutions discusses the use of stress testing as a tool in certain aspects of risk management, such as for commercial real estate concentrations, liquidity risk management, and interest-rate risk management. However, no institution at or below $10 billion in total consolidated assets is subject to this final guidance.

Building upon previously issued supervisory guidance that discusses the uses and merits of stress testing in specific areas of risk management, this guidance provides broad principles a banking organization should follow in conducting its stress testing activities, such as ensuring that those activities fit into the organization's overall risk management program. The guidance outlines broad principles for a satisfactory stress testing framework and describes the manner in which stress testing should be employed as an integral component of risk management that is applicable at various levels of aggregation within a banking organization, as well as for contributing to capital and liquidity planning.[4] While the guidance is not intended to provide detailed instructions for conducting stress testing for any particular risk or business area, the document describes several types of stress testing activities and how they may be most appropriately used by banking organizations.

## II. Overview of Stress Testing Framework

For purposes of this guidance, stress testing refers to exercises used to conduct a forward-looking assessment of the potential impact of various adverse events and circumstances on a banking organization. Stress testing occurs at various levels of aggregation, including on an enterprise-wide basis. As outlined in section IV, there are several approaches and applications for

[1] *See, e.g.,* Supervision and Regulation Letter SR 10–6, OCC Bulletin 2010–13 or FDIC Financial Institution Letter (FIL) 13–2010, *Interagency Policy Statement on Funding and Liquidity Risk Management* (March 17, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1006.htm* (hereinafter *Funding and Liquidity Risk Management Policy Statement*); Supervision and Regulation Letter SR 10–1, OCC Bulletin 2010–1 or FDIC FIL–2–2010, *Interagency Advisory on Interest Rate Risk* (January 11, 2010), available at *http://www.federalreserve.gov/boarddocs/srletters/2010/sr1001.htm* (hereinafter *Interest Rate Risk Advisory);* Supervision and Regulation Letter SR 09–4, *Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies* (revised March 27, 2009), available at *http://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm* (hereinafter SR 09–04); Supervision and Regulation Letter SR 07–1, OCC Bulletin 2006–46 or FDIC FIL–104–2006, *Interagency Guidance on Concentrations in Commercial Real Estate* (January 4, 2007), available at *http://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* Supervision and Regulation Letter SR 01–4, OCC Bulletin 2001–6 or FDIC FIL–9–2001, *Subprime Lending* (January 31, 2001), available at *http://www.federalreserve.gov/boarddocs/srletters/2001/SR0104.htm;* Supervision and Regulation Letter SR 99–18, *Assessing Capital Adequacy in Relation to Risk at Large Banking Organizations and Others with Complex Risk Profiles* (July 1, 1999), available at *http://www.federalreserve.gov/boarddocs/srletters/1999/SR9918* (hereinafter SR 99–18); *Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework, 73 FR 44620 (July 31, 2008) (hereinafter Supervisory Review Process of Capital Adequacy); The Supervisory Capital Assessment Program: Overview of Results* (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf; Comprehensive Capital Analysis and Review: Objectives and Overview* (March 18, 2011), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20110318a1.pdf;* and 12 CFR 225.8.

[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376) requires financial organizations with more than $10 billion in total consolidated assets to conduct a stress test at least annually. *See generally* 12 U.S.C. 5365(i)(2).

[3] Given the unique structure of U.S. branches and agencies of foreign banking organizations, the agencies recognize that certain aspects of this guidance may not apply to those U.S. branches and agencies (such as the portions related to capital stress testing) or may apply differently (such as the portions related to governance and controls). Supervisors can work with these entities on a case-by-case basis to identify the portions of the guidance that are most relevant for them.

[4] While capital and liquidity stress tests may be among the most prominent, other types of stress testing exercises that use different metrics should be conducted.

stress testing and a banking organization should consider the use of each in its stress testing framework.

An effective stress testing framework provides a comprehensive, integrated, and forward-looking set of activities for a banking organization to employ along with other practices in order to assist in the identification and measurement of its material risks and vulnerabilities, including those that may manifest themselves during stressful economic or financial environments, or arise from firm-specific adverse events. Such a framework should supplement other quantitative risk management practices, such as those that rely primarily on statistical estimates of risk or loss estimates based on historical data, as well as qualitative practices. In this manner, stress testing can assist in highlighting unidentified or under-assessed risk concentrations and interrelationships and their potential impact on the banking organization during times of stress.[5]

A banking organization should develop and implement its stress testing framework in a manner commensurate with its size, complexity, business activities, and overall risk profile. Its stress testing framework should include clearly defined objectives, well-designed scenarios tailored to the banking organization's business and risks, well-documented assumptions, sound methodologies to assess potential impact on the banking organization's financial condition, informative management reports, ongoing and effective review of stress testing processes, and recommended actions based on stress test results. Stress testing should incorporate the use of high-quality data and appropriate assumptions about the performance of the institution under stress to ensure that the outputs are credible and can be used to support decision-making. Importantly, a banking organization should have a sound governance and control infrastructure with objective, critical review to ensure the stress testing framework is functioning as intended.

A stress testing framework should allow a banking organization to conduct consistent, repeatable exercises that focus on its material exposures, activities, risks, and strategies, and also conduct ad hoc scenarios as needed. The framework should consider the impact of both firm-specific and systemic stress events and circumstances that are based on historical experience as well as on hypothetical occurrences that could have an adverse impact on a banking organization's operations and financial condition. Banking organizations subject to this guidance should develop policies on reviewing and assessing the effectiveness of their stress testing frameworks, and use those policies at least annually to assess the effectiveness of their frameworks. Such assessments should help to ensure that stress testing coverage is comprehensive, tests are relevant and current, methodologies are sound, and results are properly considered.

## III. General Stress Testing Principles

A banking organization should develop and implement an effective stress testing framework as part of its broader risk management and governance processes. The framework should include several activities and exercises, and not just rely on any single test or type of test, since every stress test has limitations and relies on certain assumptions.

The uses of a banking organization's stress testing framework should include, but are not limited to, augmenting risk identification and measurement; estimating business line revenues and losses and informing business line strategies; identifying vulnerabilities, assessing the potential impact from those vulnerabilities, and identifying appropriate actions; assessing capital adequacy and enhancing capital planning; assessing liquidity adequacy and informing contingency funding plans; contributing to strategic planning; enabling senior management to better integrate strategy, risk management, and capital and liquidity planning decisions; and assisting with recovery and resolution planning. This section describes general principles that a banking organization should apply in implementing such a framework.

*Principle 1:* A banking organization's stress testing framework should include activities and exercises that are tailored to and sufficiently capture the banking organization's exposures, activities, and risks.

An effective stress testing framework covers a banking organization's full set of material exposures, activities, and risks, whether on or off the balance sheet, based on effective enterprise-wide risk identification and assessment. Risks addressed in a firm's stress testing framework may include (but are not limited to) credit, market, operational, interest-rate, liquidity, country, and strategic risk. The framework should also address non-contractual sources of risks, such as those related to a banking organization's reputation. Appropriate coverage is important as stress testing results could give a false sense of comfort if certain portfolios, exposures, liabilities, or business line activities are not included. Stress testing exercises should be part of a banking organization's regular risk identification and measurement activities. For example, in assessing credit risk a banking organization should evaluate the potential impact of adverse outcomes, such as an economic downturn or declining asset values, on the condition of its borrowers and counterparties, and on the value of any supporting collateral. As another example, in assessing interest-rate risk, banking organizations should analyze the effects of significant interest rate shocks or other yield-curve movements.

An effective stress testing framework should be applied at various levels in the banking organization, such as business line, portfolio, and risk type, as well as on an enterprise-wide basis. In many cases, stress testing may be more effective at business line and portfolio levels, as a higher level of aggregation may cloud or underestimate the potential impact of adverse outcomes on a banking organization's financial condition. In some cases, stress testing can also be applied to individual exposures or instruments. Each stress test should be tailored to the relevant level of aggregation, capturing critical risk drivers, internal and external influences, and other key considerations at the relevant level.

Stress testing should capture the interplay among different exposures, activities, and risks and their combined effects. While stress testing several types of risks or business lines simultaneously may prove operationally challenging, a banking organization should aim to identify common risk drivers across risk types and business lines that can adversely affect its financial condition. Accordingly, stress tests should provide a banking organization with the ability to identify potential concentrations—including those that may not be readily observable during benign periods and whose sensitivity to a common set of factors is apparent only during times of stress—and to assess the impact of identified concentrations of exposures, activities, and risks within and across portfolios and business lines and on the organization as a whole.

Stress testing should be tailored to the banking organization's idiosyncrasies and specific business mix and include all major business lines and significant individual counterparties. For example,

[5] For purposes of this guidance, the term ''concentrations'' refers to groups of exposures and/or activities that have the potential to produce losses large enough to bring about a material change in a banking organization's risk profile or financial condition.

a banking organization that is geographically concentrated may determine that a certain segment of its business may be more adversely affected by shocks to economic activity at the state or local level than by a severe national recession. On the other hand, if the banking organization has significant global operations, it should consider scenarios that have an international component and stress conditions that could affect the different aspects of its operations in different ways, as well as conditions that could adversely affect all of its operations at the same time.

A banking organization should use its stress testing framework to determine whether exposures, activities, and risks under normal and stressed conditions are aligned with the banking organization's risk appetite.[6] A banking organization can use stress testing to help inform decisions about its strategic direction and/or risk appetite by better understanding the risks from its exposures or of engaging in certain business practices. For example, if a banking organization pursues a business strategy for a new or modified product, and the banking organization does not have long-standing experience with that product or lacks extensive data, the banking organization can use stress testing to identify the product's potential downsides and unanticipated risks. Scenarios used in a banking organization's stress tests should be relevant to the direction and strategy set by its board of directors, as well as sufficiently severe to be credible to internal and external stakeholders.

*Principle 2:* An effective stress testing framework employs multiple conceptually sound stress testing activities and approaches.

All measures of risk, including stress tests, have an element of uncertainty due to assumptions, limitations, and other factors associated with using past performance measures and forward-looking estimates. Banking organizations should, therefore, use multiple stress testing activities and approaches (consistent with section IV), and ensure that each is conceptually sound. Stress tests usually vary in design and complexity, including the number of factors employed and the degree of stress applied. A banking organization should ensure that the complexity of any given test does not undermine its integrity, usefulness, or clarity. In some cases, relatively simple tests can be very useful and informative.

Additionally, effective stress testing relies on high-quality input data and information to produce credible outcomes. A banking organization should ensure that it has readily available data and other information for the types of stress tests it uses, including key variables that drive performance. In addition, a banking organization should have appropriate management information systems (MIS) and data processes that enable it to collect, sort, aggregate, and update data and other information efficiently and reliably within business lines and across the banking organization for use in stress testing. If certain data and information are not current or not available, or if proxies are used, a banking organization should analyze the stress test outputs with an understanding of those data limitations.

A banking organization should also document the assumptions used in its stress tests and note the degree of uncertainty that may be incorporated into the tools used for stress testing. In some cases, it may be appropriate to present and analyze test results not just in terms of point estimates, but also including the potential margin of error or statistical uncertainty around the estimates. Furthermore, almost all stress tests, including well-developed quantitative tests supported by high-quality data, employ a certain amount of expert or business judgment, and the role and impact of such judgment should be clearly documented. In some cases, when credible data are lacking and more quantitative tests are operationally challenging or in the early stages of development, a banking organization may choose to employ more qualitatively based tests, provided that the tests are properly documented and their assumptions are transparent. Regardless of the type of stress tests used, a banking organization should understand and clearly document all assumptions, uncertainties, and limitations, and provide that information to users of the stress testing results.

*Principle 3:* An effective stress testing framework is forward-looking and flexible.

A stress testing framework should be sufficiently dynamic and flexible to incorporate changes in a banking organization's on- and off-balance-sheet activities, portfolio composition, asset quality, operating environment, business strategy, and other risks that may arise over time from firm-specific events, macroeconomic and financial market developments, or some combination of these events. A banking organization should also ensure that its MIS are capable of incorporating relatively rapid changes in exposures, activities, and risks.

While stress testing should utilize available historical information, a banking organization should look beyond assumptions based only on historical data and challenge conventional assumptions. A banking organization should ensure that it is not constrained by past experience and that it considers multiple scenarios, even scenarios that have not occurred in the recent past or during the banking organization's history. For example, a banking organization should not assume that if it has suffered no or minimal losses in a certain business line or product that such a pattern will continue. Structural changes in customer, product, and financial markets can present unprecedented situations for a banking organization. A banking organization with any type of significant concentration can be particularly vulnerable to rapid changes in economic and financial conditions and should try to identify and better understand the impact of those vulnerabilities in advance. For example, the risks related to residential mortgages were underestimated for a number of years leading up to the 2007–2009 financial crisis by a large number of banking organizations, and those risks eventually affected the banking organizations in a variety of ways. Effective stress testing can help a banking organization identify any such concentrations and help understand the potential impact of several key aspects of the business being exposed to common drivers.

Stress testing should be conducted over various relevant time horizons to adequately capture both conditions that may materialize in the near term and adverse situations that take longer to develop. For example, when a banking organization stress tests a portfolio for market and credit risks simultaneously, it should consider that certain credit risk losses may take longer to materialize than market risk losses, and also that the severity and speed of mark-to-market losses may create significant vulnerabilities for the firm, even if a more fundamental analysis of how realized losses may play out over time seems to show less threatening results. A banking organization should carefully consider the incremental and cumulative effects of stress conditions, particularly with respect to potential interactions among exposures, activities,

[6] For purposes of this guidance, risk appetite is defined as the level and type of risk an organization is able and willing to assume in its exposures and business activities, given its business objectives and obligations to stakeholders. *See* Senior Supervisors Group, *Observations on Developments in Risk Appetite Frameworks and IT Infrastructure* (December 23, 2010), available at *http://www.newyorkfed.org/newsevents/news/banking/2010/an101223.pdf.*

and risks and possible second-order or ''knock-on'' effects.

In addition to conducting formal, routine stress tests, a banking organization should have the flexibility to conduct new or ad hoc stress tests in a timely manner to address rapidly emerging risks. These less routine tests usually can be conducted in a short amount of time and may be simpler and less extensive than a banking organization's more formal, regular tests. However, for its ad hoc tests a banking organization should still have the capacity to bring together approximated information on risks, exposures, and activities and assess their impact.

More broadly, a banking organization should continue updating and maintaining its stress testing framework in light of new risks, better understanding of the banking organization's exposures and activities, new stress testing techniques, and any changes in its operating structure and environment. A banking organization's stress testing development should be iterative, with ongoing adjustments and refinements to better calibrate the tests to provide current and relevant information. Banking organizations should document the ongoing development of their stress testing practices.

*Principle 4:* Stress test results should be clear, actionable, well supported, and inform decision-making.

Stress testing should incorporate measures that adequately and effectively convey results of the impact of adverse outcomes. Such measures may include, for example, changes to asset values, accounting and economic profit and loss, revenue streams, liquidity levels, cash flows, regulatory capital, risk-weighted assets, the loan loss allowance, internal capital estimates, levels of problem assets, breaches in covenants or key trigger levels, or other relevant measures. Stress test measures should be tailored to the type of test and the particular level at which the test is applied (for example, at the business line or risk level). Some stress tests may require using a range of measures to evaluate the full impact of certain events, such as a severe systemic event. In addition, all stress test results should be accompanied by descriptive and qualitative information (such as key assumptions and limitations) to allow users to interpret the exercises in context. The analysis and the process should be well documented so that stress testing processes can be replicated if need be.

A banking organization should regularly communicate stress test results to appropriate levels within the banking organization to foster dialogue around stress testing, keep the board of directors, management, and staff apprised, and to inform stress testing approaches, results, and decisions in other areas of the banking organization. A banking organization should maintain an internal summary of test results to document at a high level the range of its stress testing activities and outcomes, as well as proposed follow-up actions. Regular review of stress test results can be an important part of a banking organization's ability over time to track the impact of ongoing business activities, changes in exposures, varying economic conditions, and market movements on its financial condition. In addition, management should review stress testing activities on a regular basis to determine, among other things, the validity of the assumptions, the severity of tests, the robustness of the estimates, the performance of any underlying models, and the stability and reasonableness of the results.

Stress test results should inform analysis and decision-making related to business strategies, limits, risk profile, and other aspects of risk management, consistent with the banking organization's established risk appetite. A banking organization should review the results of its various stress tests with the strengths and limitations of each test in mind (consistent with Principle 2), determine which results should be given greater or lesser weight, analyze the combined impact of its tests, and then evaluate potential courses of action based on that analysis. A banking organization may decide to maintain its current course based on test results; indeed, the results of highly severe stress tests need not always indicate that immediate action has to be taken. Wherever possible, benchmarking or other comparative analysis should be used to evaluate the stress testing results relative to other tools and measures—both internal and external to the banking organization—to provide proper context and a check on results.

*Principle 5:* An organization's stress testing framework should include strong governance and effective internal controls.

Similar to other aspects of its risk management, a banking organization's stress testing framework will be effective only if it is subject to strong governance and effective internal controls to ensure the framework is functioning as intended. Strong governance and effective internal controls help ensure that the framework contains core elements, from clearly defined stress testing objectives to recommended actions. Importantly, strong governance provides critical review of elements of the stress testing framework, especially regarding key assumptions, uncertainties, and limitations. A banking organization should ensure that the stress testing framework is not isolated within a banking organization's risk management function, but is firmly integrated into business lines, capital and asset-liability committees, and other decision-making bodies. Along those lines, the board of directors and senior management should play key roles in ensuring strong governance and controls. The extent and sophistication of a banking organization's governance over its stress testing framework should align with the extent and sophistication of that framework. Additional details regarding governance and controls of an organization's stress testing framework are outlined in section VI.

## IV. Stress Testing Approaches and Applications

This section discusses some general types of stress testing approaches and applications. For any type of stress test, banking organizations should indicate the specific purpose and the focus of the test. Defining the scope of a given stress test is also important, whether it applies at the portfolio, business line, risk type, or enterprise-wide level, or even just for an individual exposure or counterparty. Based on the purpose and scope of the test, different stress testing techniques are most useful. Thus, a banking organization should employ several approaches and applications; these might include scenario analysis, sensitivity analysis, enterprise-wide stress testing, and reverse stress testing. Consistent with Principle 1, banking organizations should apply these commensurate with their size, complexity, and business profile, and may not need to incorporate all of the details described below. Consistent with Principle 3, banking organizations should also recognize that stress testing approaches will evolve over time and they should update their practices as needed.

### *Scenario Analysis*

Scenario analysis refers to a type of stress testing in which a banking organization applies historical or hypothetical scenarios to assess the impact of various events and circumstances, including extreme ones. Scenarios usually involve some kind of coherent, logical narrative or ''story'' as to why certain events and circumstances can occur and in which combination and order, such as a severe recession,

failure of a major counterparty, loss of major clients, natural or man-made disaster, localized economic downturn, disruptions in funding or capital markets, or a sudden change in interest rates brought about by unfavorable inflation developments. Scenario analysis can be applied at various levels of the banking organization, such as within individual business lines to help identify factors that could harm those business lines most.

Stress scenarios should reflect a banking organization's unique vulnerabilities to factors that affect its exposures, activities, and risks. For example, if a banking organization is concentrated in a particular line of business, such as commercial real estate or residential mortgage lending, it would be appropriate to explore the impact of a downturn in those particular market segments. Similarly, a banking organization with lending concentrations to oil and gas companies should include scenarios related to the energy sector. Other relevant factors to be considered in scenario analysis relate to operational, reputational and legal risks to a banking organization, such as significant events of fraud or litigation, or a situation when a banking organization feels compelled to provide support to an affiliate or provide other types of non-contractual support to avoid reputational damage. Scenarios should be internally consistent and portray realistic outcomes based on underlying relationships among variables, and should include only those mitigating developments that are consistent with the scenario. Additionally, a banking organization should consider the best manner to try to capture combinations of stressful events and circumstances, including second-order and ''knock-on'' effects. Ultimately, a banking organization should select and design multiple scenarios that are relevant to its profile and make intuitive sense, use enough scenarios to explore the range of potential outcomes, and ensure that the scenarios continue to be timely and relevant.

A banking organization may apply scenario analysis within the context of its existing risk measurement tools (e.g., the impact of a severe decline in market prices on a banking organization's value-at-risk (VaR) measure) or use it as an alternative, supplemental measure. For instance, a banking organization may use scenario analysis to measure the impact of a severe financial market disturbance and compare those results to what is produced by its VaR or other measures. This type of scenario analysis should account for known shortcomings of other risk measurement practices. For example, market risk VaR models generally assume liquid markets with known prices. Scenario analysis could shed light on the effects of a breakdown in liquidity and of valuation difficulties.

One of the key challenges with scenario analysis is to translate a scenario into balance sheet impact, changes in risk measures, potential losses, or other measures of adverse financial impact, which would vary depending on the test design and the type of scenario used. For some aspects of scenario analysis, banking organizations may use econometric or similar types of analysis to estimate a relationship between some underlying factors or drivers and risk estimates or loss projections based on a given data set, and then extrapolate to see the impact of more severe inputs. Care should be taken not to make assumptions that relationships from benign or mildly adverse times will hold during more severe times or that estimating such relationships is relatively straightforward. For example, linear relationships between risk drivers and losses may become nonlinear during times of stress. In addition, organizations should recognize that there can be multiple permutations of outcomes from just a few key risk drivers.

*Sensitivity Analysis*

Sensitivity analysis refers to a banking organization's assessment of its exposures, activities, and risks when certain variables, parameters, and inputs are ''stressed'' or ''shocked.'' A key goal of sensitivity analysis is to test the impact of assumptions on outcomes. Generally, sensitivity analysis differs from scenario analysis in that it involves changing variables, parameters, or inputs without an explicit underlying reason or narrative, in order to explore what occurs under a range of inputs and at extreme or highly adverse levels. In this type of analysis a banking organization may realize, for example, that a given relationship is much more difficult to estimate at extreme levels.

A banking organization may apply sensitivity analysis at various levels of aggregation to estimate the impact from a change in one or more key variables. The results may help a banking organization better understand the range of outcomes from some of its models, such as developing a distribution of output based on a variety of extreme inputs. For example, a banking organization may choose to calculate a range of changes to a structured security's overall value using a range of different assumptions about the performance and linkage of underlying cash flows. Sensitivity analysis should be conducted periodically due to potential changes in a banking organization's exposures, activities, operating environment, or the relationship of variables to one another.

Sensitivity analysis can also help to assess a combined impact on a banking organization of several variables, parameters, factors, or drivers. For example, a banking organization could better understand the impact on its credit losses from a combined increase in default rates and a decrease in collateral values. A banking organization could also explore the impact of highly adverse capitalization rates, declines in net operating income, and reductions in collateral when evaluating its risks from commercial real estate exposures. Sensitivity analysis can be especially useful because it is not necessarily accompanied by a particular narrative or scenario; that is, sensitivity analysis can provide banking organizations more flexibility to explore the impact of potential stresses that they may not be able to capture in designed scenarios. Furthermore, banking organizations may decide to conduct sensitivity analysis of their scenarios, i.e., choosing different levels or paths of variables to understand the sensitivities of choices made during scenario design. For instance, banking organizations may decide to apply a few different interest-rate paths for a given scenario.

*Enterprise-Wide Stress Testing*

Enterprise-wide stress testing is an application of stress testing that involves assessing the impact of certain specified scenarios on the banking organization as a whole, particularly with regard to capital and liquidity. As is the case with scenario analysis more generally, enterprise-wide stress testing involves robust scenario design and effective translation of scenarios into measures of impact. Enterprise-wide stress tests can help a banking organization in its efforts to assess the impact of its full set of risks under adverse events and circumstances, but should be supplemented with other stress tests and other risk measurement tools given inherent limitations in capturing all risks and all adverse outcomes in one test.

Scenario design for enterprise-wide stress testing involves developing scenarios that affect the banking organization as a whole that stem from macroeconomic, market-wide, and/or firm-specific events. These scenarios should incorporate the potential simultaneous occurrence of both firm-

specific and macroeconomic and market-wide events, considering system-wide interactions and feedback effects. For example, price shocks may lead to significant portfolio losses, rising funding gaps, a ratings downgrade, and diminished access to funding. In general, it is a good practice to consult with a large set of individuals within the banking organization—in various business lines, research and risk areas—to gain a wide perspective on how enterprise-wide scenarios should be designed and to ensure that the scenarios capture the relevant aspects of the banking organization's business and risks. Banking organizations should also conduct scenarios of varying severity to gauge the relative impact. At least some scenarios should be of sufficient severity to challenge the viability of the banking organization, and should include instantaneous market shocks and stressful periods of extended duration (e.g., not just a one- or two-quarter shock after which conditions return to normal).

Selection of scenario variables is important for enterprise-wide tests, because these variables generally serve as the link between the overall narrative of the scenario and tangible impact on the banking organization as a whole. For instance, in aiming to capture the combined impact of a severe recession and a financial market downturn, a banking organization may choose a set of variables such as changes in gross domestic product (GDP), unemployment rate, interest rates, stock market levels, or home price levels. However, particularly when assessing the impact on the whole banking organization, using a large number of variables can make a test more cumbersome and complicated—so a banking organization may also benefit from simpler scenarios or from those with fewer variables. Banking organizations should balance the comprehensiveness of contributing variables and tractability of the exercise.

As with scenario analysis generally, translating scenarios into tangible effects on the banking organization as a whole presents certain challenges. A banking organization should identify appropriate and meaningful mechanisms for translating scenarios into relevant internal risk parameters that provide a firm-wide view of risks and understanding of how these risks are translated into loss estimates. Not all business areas are equally affected by a given scenario, and problems in one business area can have effects on other units. However, for an enterprise-wide test, assumptions across business lines and risk areas should remain constant for the chosen scenario, since the objective is to see how the banking organization as a whole will be affected by a common scenario.

*Reverse Stress Testing*

Reverse stress testing is a tool that allows a banking organization to assume a known adverse outcome, such as suffering a credit loss that breaches regulatory capital ratios or suffering severe liquidity constraints that render it unable to meet its obligations, and then deduce the types of events that could lead to such an outcome. This type of stress testing may help a banking organization to consider scenarios beyond its normal business expectations and see the impact of severe systemic effects on the banking organization. It also allows a banking organization to challenge common assumptions about its performance and expected mitigation strategies.

Reverse stress testing helps to explore so-called ''break the bank'' situations, allowing a banking organization to set aside the issue of estimating the likelihood of severe events and to focus more on what kinds of events could threaten the viability of the banking organization. This type of stress testing also helps a banking organization evaluate the combined effect of several types of extreme events and circumstances that might threaten the survival of the banking organization, even if in isolation each of the effects might be manageable. For instance, reverse stress testing may help a banking organization recognize that a certain level of unemployment would have a severe impact on credit losses, that a market disturbance could create additional losses and result in rising funding costs, and that a firm-specific case of fraud would cause even further losses and reputational impact that could threaten a banking organization's viability. In some cases, reverse stress tests could reveal to a banking organization that ''breaking the bank'' is not as remote an outcome as originally thought.

Given the numerous potential threats to a banking organization's viability, the organization should ensure that it focuses first on those scenarios that have the largest firm-wide impact, such as insolvency or illiquidity, but also on those that seem most imminent given the current environment. Focusing on the most prominent vulnerabilities helps a banking organization prioritize its choice of scenarios for reverse stress testing. However, a banking organization should also consider a wider range of possible scenarios that could jeopardize the viability of the banking organization, exploring what could represent potential blind spots. Reverse stress testing can highlight previously unacknowledged sources of risk that could be mitigated through enhanced risk management.

## V. Stress Testing for Assessing the Adequacy of Capital and Liquidity

There are many uses of stress testing within banking organizations. Prominent among these are stress tests designed to assess the adequacy of capital and liquidity. Given the importance of capital and liquidity to a banking organization's viability, stress testing should be applied in these two areas in particular, including an evaluation of the interaction between capital and liquidity and the potential for both to become impaired at the same time. Depletions and shortages of capital or liquidity can cause a banking organization to no longer perform effectively as a financial intermediary, be viewed by its counterparties as no longer viable, become insolvent, or diminish its capacity to meet legal and financial obligations. A banking organization's capital and liquidity stress testing should consider how losses, earnings, cash flows, capital, and liquidity would be affected in an environment in which multiple risks manifest themselves at the same time, for example, an increase in credit losses during an adverse interest-rate environment. Additionally, banking organizations should recognize that at the end of the time horizon considered by a given stress test, they may still have substantial residual risks or problem exposures that may continue to pressure capital and liquidity resources.

Stress testing for capital and liquidity adequacy should be conducted in coordination with a banking organization's overall strategy and annual planning cycles. Results should be refreshed in the event of major strategic decisions, or other decisions that can materially impact capital or liquidity. Banking organizations should conduct stress testing for capital and liquidity adequacy periodically.

*Capital Stress Testing*

Capital stress testing results can serve as a useful tool to support a banking organization's capital planning and corporate governance.[7] They may help a banking organization better understand its vulnerabilities and evaluate the impact of adverse outcomes on its

[7] In this manner, stress testing can form an integral part of an organization's internal capital adequacy process, consistent with supervisory standards outlined in *SR 09–4, SR 99–18,* and *Supervisory Review Process of Capital Adequacy, supra* note 12.

capital position and ensure that the banking organization holds adequate capital given its business model, including the complexity of its activities and its risk profile. Capital stress testing complements a banking organization's regulatory capital analysis [8] by providing a forward-looking assessment of capital adequacy, usually with a forecast horizon of at least two years (with the recognition that the effects of certain stress conditions could extend beyond two years for some stress tests), and highlighting the potential adverse effects on capital levels and ratios from risks not fully captured in regulatory capital requirements. It should also be used to help a banking organization assess the quality and composition of capital and its ability to absorb losses. Stress testing can aid capital contingency planning by helping management identify exposures or risks in advance that would need to be reduced and actions that could be taken to bolster capital levels or otherwise maintain capital adequacy, as well as actions that in times of stress might not be possible—such as raising capital.

Capital stress testing should include exercises that analyze the potential for changes in earnings, losses, reserves, and other potential effects on capital under a variety of stressful circumstances. Such testing should also capture any potential change in risk-weighted assets, the ability of capital to absorb losses, and any resulting impact on the banking organization's capital ratios. It should include all relevant risk types and other factors that have a potential to affect capital adequacy, whether directly or indirectly, including firm-specific ones. A banking organization should also explore the potential for possible balance sheet expansion to put pressure on capital ratios and consider risk mitigation and capital preservation options, other than simply shrinking the balance sheet. Capital stress testing should assess the potential impact of a banking organization's material subsidiaries suffering capital problems on their own—such as being unable to meet local country capital requirements—even if the consolidated banking organization is not encountering problems.[9] Where material relative to the banking organization's capital, counterparty exposures should also be included in capital stress testing.

Enterprise-wide stress testing, as described in section IV, should be an integral part of a banking organization's capital stress testing.[10] Such enterprise-wide testing should include pro-forma estimates of not only potential losses and resources available to absorb losses, but also potential planned capital actions (such as dividends or share repurchases) that would affect the banking organization's capital position, including regulatory and other capital ratios. There should also be consideration of the impact on the banking organization's allowance for loan and lease losses and other relevant financial metrics. Even with very effective enterprise-wide tests, banking organizations should use capital stress testing in conjunction with other internal approaches (in addition to regulatory measures) for assessing capital adequacy, such as those that rely primarily on statistical estimates of risk or loss estimates based on historical data.

*Liquidity Stress Testing*

A banking organization should also conduct stress testing for liquidity adequacy.[11] Through such stress testing a banking organization can work to identify vulnerabilities related to liquidity adequacy in light of both firm-specific and market-wide stress events and circumstances. Effective stress testing helps a banking organization identify and quantify the depth, source, and degree of potential liquidity and funding strain and to analyze possible impacts on its cash flows, liquidity position, profitability, and other aspects of its financial condition over various time horizons. For example, stress testing can be used to explore potential funding shortfalls, shortages in liquid assets, the inability to issue debt, exposure to possible deposit outflows, volatility in short-term brokered deposits, sensitivity of funding to a ratings downgrade, and the impact of reduced collateral values on borrowing capacity at the Federal Home Loan Banks, the Federal Reserve discount window, or other secured wholesale funding sources.

Liquidity stress testing should explore the potential impact of adverse developments that may affect market and asset liquidity, including the freezing up of credit and funding markets, and the corresponding impact on the banking organization. Such tests can also help identify the conditions under which balance sheets might expand, thus creating additional funding needs (e.g., through accelerated drawdowns on unfunded commitments). These tests also help determine whether the banking organization has a sufficient liquidity buffer to meet various types of future liquidity demands under stressful conditions. In this regard, liquidity stress testing should be an integral part of the development and maintenance of a banking organization's contingency funding planning. Liquidity stress testing should include enterprise-wide tests as discussed in section IV, but should also be applied, as appropriate, at lower levels of the banking organization, and in particular should account for regulatory or supervisory restrictions on inter-affiliate funding and asset transfers. As with capital stress testing, banking organizations may need to conduct liquidity stress tests at both the consolidated and subsidiary level. In undertaking enterprise-wide liquidity tests banking organizations should make realistic assumptions as to the implications of liquidity stresses in one part of the banking organization on other parts.

An effective stress testing framework should explore the potential for capital and liquidity problems to arise at the same time or exacerbate one another. For example, a banking organization in a stressed liquidity position is often required to take actions that have a negative direct or indirect capital impact (e.g., selling assets at a loss or incurring funding costs at above market rates to meet funding needs). A banking organization's liquidity stress analysis should explore situations in which the banking organization may be operating with a capital position that exceeds regulatory minimums, but is nonetheless viewed within the financial markets or by its counterparties as being of questionable viability. Assessing the potential interaction of capital and liquidity can be challenging and may not be possible within a single stress test, so organizations should explore several avenues to assess that interaction. As with other applications of stress testing, for its capital and liquidity stress tests, it is beneficial for a banking organization to articulate

[8] While savings and loan holding companies currently are not subject to consolidated regulatory leverage or risk-based capital requirements, a savings and loan holding company should have sufficient capital and an effective capital planning process, consistent with its overall risk profile and considering the size, scope, and complexity of its operations, to ensure the safe and sound operation of the company. See Supervision and Regulation Letter SR 11–11, Supervision of Savings and Loan Holding Companies (July 21, 2011), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1111.pdf.*

[9] For regulated subsidiaries, stress testing activities should be fully consistent with the regulations and guidance of the relevant primary federal supervisor.

[10] The agencies expect that the stress test requirements in the Dodd-Frank Act for companies with more than $10 billion in assets would be an integral part of this type of stress testing.

[11] *See, Funding and Liquidity Risk Management Policy Statement* and *Interest Rate Risk Advisory, supra* note 12.

clearly its objectives for a post-stress outcome, for instance to remain a viable financial market participant that is able to meet its existing and prospective obligations and commitments. In such cases, banking organizations would have to consider which measures of financial condition would need to be met on a post-stress basis to secure the confidence of counterparties and market participants.

## VI. Governance and Controls

As noted under Principle 5, a banking organization's stress testing framework will be effective only if it is subject to strong governance and controls to ensure the framework is functioning as intended. The extent and sophistication of a banking organization's governance over its stress testing framework should align with the extent and sophistication of that framework.

Governance over a banking organization's stress testing framework rests with the banking organization's board of directors and senior management. As part of their overall responsibilities, a banking organization's board and senior management should establish a comprehensive, integrated and effective stress testing framework that fits into the broader risk management of the banking organization. While the board is ultimately responsible for ensuring that the banking organization has an effective stress testing framework, senior management generally has responsibility for implementing that framework. Senior management duties should include establishing adequate policies and procedures and ensuring compliance with those policies and procedures, assigning competent staff, overseeing stress test development and implementation, evaluating stress test results, reviewing any findings related to the functioning of stress test processes, and taking prompt remedial action where necessary. Senior management, directly and through relevant committees, also should be responsible for regularly reporting to the board on stress testing developments (including the process to design tests and develop scenarios) and on stress testing results (including from individual tests, where material), as well as on compliance with stress testing policy. Board members should actively evaluate and discuss this information, ensuring that the stress testing framework is in line with the banking organization's risk appetite, overall strategy and business plans, and contingency plans, directing changes where appropriate.

A banking organization should have written policies, approved and annually reviewed by the board, that direct and govern the implementation of the stress testing framework in a comprehensive manner. Policies, along with procedures to implement them, should:

- Describe the overall purpose of stress testing activities;
- Articulate consistent and sufficiently rigorous stress testing practices across the entire banking organization;
- Indicate stress testing roles and responsibilities, including controls over external resources used for any part of stress testing (such as vendors and data providers);
- Describe the frequency and priority with which stress testing activities should be conducted;
- Indicate how stress test results are used, by whom, and outline instances in which remedial actions should be taken; and
- Be reviewed and updated as necessary to ensure that stress testing practices remain appropriate and keep up to date with changes in market conditions, banking organization products and strategies, banking organization exposures and activities, the banking organization's established risk appetite, and industry stress testing practices.

A stress testing framework should incorporate validation or other type of independent review to ensure the integrity of stress testing processes and results, consistent with existing supervisory expectations.[12] If a banking organization engages a third party vendor to support some or all of its stress testing activities, there should be appropriate controls in place to ensure that those externally developed systems and processes are sound, applied correctly, and appropriate for the banking organization's risks, activities, and exposures. Additionally, senior management should be mindful of any potential inconsistencies, contradictions, or gaps among its stress tests and assess what actions should be taken as a result. Internal audit should also provide independent evaluation of the ongoing performance, integrity, and reliability of the stress testing framework. A banking organization should ensure that its stress tests are documented appropriately, including a description of the types of stress tests and methodologies used, key assumptions, results, and suggested actions. Senior management, in consultation with the board, should review stress testing activities and results with an appropriately critical eye and ensure that there is objective review of all stress testing processes.

The results of stress testing analyses should facilitate decision-making by the board and senior management. Stress testing results should be used to inform the board about alignment of the banking organization's risk profile with the board's chosen risk appetite, as well as inform operating and strategic decisions. Stress testing results should be considered directly by the board and senior management for decisions relating to capital and liquidity adequacy, including capital contingency plans and contingency funding plans. Senior management, in consultation with the board, should ensure that the stress testing framework includes a sufficient range of stress testing activities applied at the appropriate levels of the banking organization (i.e., not just one enterprise-wide stress test). Sound governance also includes using stress testing to consider the effectiveness of a banking organization's risk mitigation techniques for various risk types over their respective time horizons, such as to explore what could occur if expected mitigation techniques break down during stressful periods.

## VII. Conclusion

A banking organization should use the principles laid out in this guidance to develop, implement, and maintain an effective stress testing framework. Such a framework should be adequately tailored to the banking organization's size, complexity, risks, exposures, and activities. A key purpose of stress testing is to explore various types of possible outcomes, including rare and extreme events and circumstances, assess their impact on the banking organization, and then evaluate the boundaries up to which the banking organization plans to be able to withstand such outcomes. Stress testing may be particularly valuable during benign periods when other measures may not indicate emerging risks.

While stress testing can provide valuable information regarding potential future outcomes, similar to any other risk management tool it has limitations and cannot provide absolute certainty regarding the implications of assumed events and impacts. Furthermore, management should ensure that stress testing activities are not constrained to

[12] For validation of models and other quantitative tools used for stress testing, *see* OCC Bulletin 2011–12, *Supervisory Guidance on Model Risk Management* (April 4, 2011), available at *http://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-12a.pdf;* or Supervision and Regulation Letter SR 11–7, *Guidance on Model Risk Management* (April 4, 2011), available at *http://www.federalreserve.gov/bankinforeg/srletters/sr1107.pdf.*

reflect past experiences, but instead consider a broad range of possibilities. No single stress test can accurately estimate the impact of all stressful events and circumstances; therefore, a banking organization should understand and account for stress testing limitations and uncertainties, and use stress tests in combination with other risk management tools to make informed risk management and business decisions.

Dated: May 10, 2012.

**Thomas J. Curry,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, May 11, 2012.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 10th day of May 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2012–11989 Filed 5–16–12; 8:45 am]

**BILLING CODE CODE 4810–33–P; 6210–01–P; 6714–01–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds—Termination: Atlantic Bonding Company, Inc.

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 19 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6850.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as acceptable surety on Federal bonds is terminated effective today. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *www.fms.treas.gov/c570*.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: May 8, 2012.

**Laura Carrico,**

*Director, Financial Accounting and Services Division.*

[FR Doc. 2012–11893 Filed 5–16–12; 8:45 am]

**BILLING CODE 4810–35–P**

# FEDERAL REGISTER

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Part II

## Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1485

Market Access Program; Final Rule

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1485

**RIN 0551–AA72**

## Market Access Program

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises and amends the regulation used to administer the Market Access Program (MAP) by updating and merging the application requirements and the activity plan requirements to reflect the Unified Export Strategy (UES) system currently in place; clarifying the eligibility of activities designed to address international market access issues; modifying the list of eligible and ineligible contributions; revising the portions of the regulation regarding evaluations, contracting procedures, and the compliance review and appeals process; eliminating the Export Incentive Program/Market Access Program (EIP/MAP) as a separate subcomponent; and making other administrative changes for clarity and program integrity. This final rule adopts the substantive provisions of the proposed rule published September 8, 2009, revising and amending MAP regulations, with changes made to reflect public comments to the proposed rule.

**DATES:** *Effective Date:* This rule is effective May 17, 2012. *Applicability Date:* This regulation will become applicable for each MAP participant at the beginning of the MAP participant's 2013 program year (i.e., 01/01/2013 or 07/01/2013).

**FOR FURTHER INFORMATION CONTACT:** Mark Slupek, 202–720–1169, U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Avenue SW., Washington, DC 20024; or by phone: (202) 720–4327; or by fax: (202) 720–9361; or by email: *podadmin@fas.usda.gov.*

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**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by the Office of Management and Budget. A cost-benefit assessment of this rule was not completed.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule would not be retroactive.

### Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Executive Order 13175

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) that will preempt Tribal law.

### Executive Order 13132

This rule does not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

### Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule.

### Environmental Assessment

CCC has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), no environmental assessment or environmental impact statement will be prepared.

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

### Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from OMB with respect to the information collection required to support this program. The information collection is described below:

*Title:* Foreign Market Development Program (FMD) and Market Access Program (MAP); OMB Control Number: 0551–0026.

The current OMB approval of this information collection is scheduled to expire on August 31, 2012. Consequently, CCC will submit a request to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., for the continued use of this information collection. CCC's request will reflect changes to the new paperwork collection requirements that were made in the final rule in response to public comments. A separate Notice of Request for Extension and Revision of Currently Approved Information Collection for the Market Access Program will be published in the **Federal Register** for comment.

### E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: *http://www.fas.usda.gov.*

### Background

Section 203 of the Agricultural Trade Act of 1978, as amended, directs CCC to carry out a program to encourage the development, maintenance, and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations. Such assistance may be provided in the form of CCC funds or CCC-owned commodities.

Since the inception of the MAP, CCC has monitored the program closely,

strengthened program controls, and implemented changes to improve the effectiveness of the program. In administering the program, CCC is committed to ensuring efficient and effective use of public funds. In this regard, CCC considers an applicant's need for Federal financial assistance, an applicant's use of rigorous performance measurements in its plans, and increasing contribution levels from Participants as important factors in the overall management of the MAP.

**Summary and Analysis of Comments**

On May 23, 2007, the CCC published an advance notice of proposed rulemaking and public hearing in the **Federal Register** (72 FR 28901). This notice was intended to solicit comments on whether to amend and revise the current MAP regulations. In addition, CCC held a public hearing on July 25, 2007, to receive oral and written comments.

On September 8, 2009 (74 FR 46027), a proposed rule was published governing the operations of MAP.

CCC received nearly 1,300 comments from nonprofit U.S. trade associations, U.S. companies, state organizations, regional trade associations, Participants, and consulting firms in response to the proposed rule. Following is a summary of the comments that specifically address the proposed rule and CCC's responses to these comments. General comments relating to the value of the program, editorial suggestions, and non-substantive comments have been omitted.

*Sec. 1485.10 General Purpose & Scope*

Policy Clarifications

CCC received 164 comments on this section.

*Comment:* Nineteen respondents expressed their concern with regard to whether previous policy clarifications will remain in effect or if the new MAP regulation will supersede the policy clarifications currently in effect. The respondents asked for clarification on this and stated that if previous policy clarifications remain in effect, that the notices should be incorporated into the new regulation.

*Response:* CCC understands that the commenters are referring to the ''Market Access Program notices'' available at *http://www.fas.usda.gov/mos/programs/mnotice.html.* CCC issues these MAP notices for informational purposes. These notices have no legal effect. They are intended to alert MAP Participants of various aspects of CCC's administration of the MAP program. For example, CCC issues MAP notices to alert MAP Participants of procedures for requesting advances, applicable federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

The content of some MAP notices were already codified in the proposed rule. In response to the commenters, CCC has incorporated into the final rule several additional MAP notices that CCC has judged to be more substantive in nature. Those MAP notices that have been so codified will be deleted from the FAS Web site.

CCC will remove certain other of the remaining MAP notices that are now obsolete or inconsistent with the final rule before or concurrent with the final rule's effective date. The remaining MAP notices will continue to be available on the Web site for informational purposes and reflect details related to CCC's current administration of the MAP program.

*Comment:* One respondent stated that although domestic travel is not addressed in the new MAP regulation, this is one area with respect to which a policy clarification exists. Fourteen additional comments were made regarding E-ticketing and internet purchasing of tickets (not through a travel agency). The respondents stated that this is an area that was previously covered by a policy clarification but is not covered in the new regulation; so the question whether previous policy clarifications will remain in effect or if the new MAP regulation will supersede the policy clarifications applies here as well.

*Response:* Domestic travel was addressed in a limited fashion in the proposed rule at § 1485.17(c)(25), which would have allowed, *inter alia,* reimbursement, solely in connection with generic promotion, only of domestic travel expenditures associated with meetings of international organizations conducted in the United States. In response to the comment, however, CCC has addressed domestic travel more extensively in several new subsections of § 1485.17(c).

New § 1485.17(c)(24) lays out the conditions under which domestic travel related to international retail, trade and consumer exhibits and shows conducted in the United States can be reimbursed.

New § 1485.17(c) (25) allows reimbursement for domestic travel for seminars and educational training conducted in the United States.

New § 1485.17(c) (26) allows reimbursement of domestic travel expenditures of certain individuals accompanying foreign trade missions or technical teams while traveling in the United States. This change codifies MAP Notice 06–002. MAP Notice 06–002 will be removed from FAS' Web site.

CCC has decided to eliminate the provision allowing reimbursement of domestic travel expenditures for a MAP Participant's attendance at meetings of international technical organizations when such meetings are conducted in the United States.

These provisions are discussed in more detail in a later response.

Domestic travel expenditures are not reimbursable for brand promotion activities.

The comments regarding E-ticketing and internet purchase of tickets appear to refer to MAP Notice 02–004. This notice reminds MAP Participants that the reimbursement of allowable travel expenses when using E-Tickets is subject to the availability of sufficient documentation to support the expenses, as is the case with all travel expenses. The notice provides examples of information that such documentation must include, such as the complete routing codes (i.e., layover and flight information for each segment of a trip in which a change of airplane or flight designation is made) and the fare amount charged (i.e., point-to-point faring). The notice also informs MAP Participants that reimbursable travel expenditures include associated reasonable and common fees that travel agents or other ticketing sources may charge for providing E-Ticket itineraries, invoices and/or receipts. The MAP final rule now sets broad guidance on the reimbursement of a MAP Participant's domestic travel. CCC believes the final rule's provisions provide sufficient guidance to MAP Participants and does not believe it necessary to codify MAP Notice 02–004's explanation of the particulars of program administration. MAP Notice 02–004 shall remain on the FAS Web site for informational purposes.

*Comment:* Six respondents asked for further clarification on the types of activities in the U.S. that are reimbursable.

*Response:* In response to the comments, CCC has made a clarification to § 1485.10(c) that, to be reimbursable, all activities that occur in the United States must develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the MAP Participant's approved MAP program.

*Comment:* Fourteen respondents recommended that the threshold in the regulations for Miscellaneous/Fixed Asset Category be raised to $500 and

proposed that software be subject to the same threshold as fixed assets.

*Response:* These comments refer to a threshold in § 1485.23(d)(2) of the current MAP regulations. This provision was not included in the proposed rule and is not included in the final rule. Section 1485.30 of the MAP final rule provides the final property standards for the program. In addition, MAP Participants are subject to the applicable property management standards described in 7 CFR Parts 3015, 3016 and 3019, depending on the nature of the MAP Participant organization.

*Comment:* One respondent stated more flexibility is needed for electronic communications, which are becoming a more important part of the marketing mix for Participants, both branded and generic.

*Response:* CCC believes that the flexibility provided in § 1485.17(b)(1) and § 1485.17(b)(16) is adequate.

*Comment:* Fourteen respondents stated that FAS refers to miscellaneous communications devices in the new regulations but did not address their usage costs and asked for clarification on whether these costs were reimbursable.

*Response:* CCC believes the reimbursement of the usage costs of various communications devices is already addressed by the various provisions in the MAP final rule. Reimbursement of such communication costs depends on the circumstances under which the communication took place. For example, where usage costs of communications devices are incurred by the MAP Participant's U.S. offices and staff, those costs are not reimbursable pursuant to § 1485.16(c) and § 1485.17(d)(26). If usage costs of communications devices are incurred while on eligible international or domestic travel for approved MAP brand or generic promotion activities and are allowed under the U.S. Federal Travel Regulations (41 CFR Parts 301 through 304), they are potentially reimbursable as international or domestic travel expenditures under the circumstances laid out in the applicable provisions in § 1485.17(b) and (c). If usage costs of communications devices are incurred as part of the organization costs for a MAP Participant's overseas office approved in its MAP program agreement and such communications originate overseas, § 1485.17(c)(11) provides that such communications costs are reimbursable for generic promotions so long as the expenditure was made in furtherance of an approved activity. Thus, the monthly service charge for a caller usage plan with unlimited minutes that is incurred primarily in furtherance of an approved activity would be fully reimbursed under MAP. In contrast, under a caller usage plan that charges by the minute, only charges for calls incurred in furtherance of an approved activity would be reimbursed under MAP.

*Section 1485.11 Definitions*

CCC received 153 comments on this section. In response to the comments, CCC has edited the definitions as set forth below. In addition, CCC has made minor clarifications to the definitions of ''contribution,'' ''program year,'' ''SRTG,'' and ''supergrade.'' CCC has also included a new definition for ''product samples.'' This definition now codifies MAP Notice 11–003, and MAP Notice 11–003 will be removed from FAS' Web site. Finally, CCC has added a new definition for MAP Notice in the MAP final rule.

*Comment:* One respondent recommended that the generic promotions be defined more broadly as ''using U.S. commodities from multiple U.S. suppliers or in cases where only one U.S. supplier is selected to supply the commodity in question, that multiple U.S. suppliers had the opportunity to submit bids or compete for the business.'' This respondent stated that as long as multiple U.S. companies had the opportunity to compete for that business, it believed promotions with these companies should be considered generic. Another respondent commented that a generic promotion should not be required to support at least two brands since this is difficult when a retailer carries only one.

*Response:* CCC disagrees with the respondents' comments suggesting that a generic promotion not be required to support at least two brands, particularly in the case raised by the respondent, in which a single company has been competitively selected over other bidders.

For clarity, CCC has moved the substance of proposed § 1485.17(d), defining what may be considered a generic promotion activity, from the section on MAP ''Reimbursement rules'' to the definition of ''generic promotion'' in § 1485.11. Original subsections (e), (f), (g), (h), (i), (j), and (k) in § 1485.17 have been re-designated as (d), (e), (j), (f), (g), (h), and (i), respectively.

*Comment:* Fourteen respondents recommended adding or clarifying definitions for the following terms: Advertising, audits, contractors, direct promotional costs, employees, foreign brand, negative comparison, overhead costs, representative, small purchase threshold, and theme.

*Response:* CCC disagrees with the respondents in regard to the need for additional definitions of these terms, except that it has further clarified the terms ''foreign brand'' and ''theme.'' The definition of ''generic promotion'' now refers to a foreign brand as ''a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market.'' Similarly, the definition of ''generic promotion'' refers to the concept of a ''unified theme'' as ''a dominant idea or motif.'' CCC has removed the term ''negative comparison'' from that definition in response to a different comment.

*Comment:* Fourteen respondents questioned the definition of audits. They stated that audits are mentioned in at least three places with seemingly contradictory provisions.

*Response:* CCC notes the MAP final rule does not define ''audit.'' However, CCC does not believe it is necessary to define this term, as CCC views this term as generally understood. In response to the comments, however, CCC agrees that the use of the term ''audit'' in § 1485.21(d)(7) is confusing and has replaced the term ''audit'' with the term ''compliance review'' in § 1485.21(d)(7).

*Comment:* Fourteen respondents commented that the use of representatives (branded) in the phrase ''no more than two representatives of a single brand participant to exhibit their company's products at a foreign trade show'' implied that these individuals have to be employees of the brand (as in § 1485.17(b)(7)). These respondents suggested that this definition be expanded to include others associated with the brand such as distributors, consultants, etc.

*Response:* CCC agrees with the respondents. CCC has modified this section (now § 1485.17(b)(8)) to expand the list of eligible representatives to include: Employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions. CCC notes that MAP Notice 99–003 is now obsolete and will be removed from FAS' Web site.

*Comment:* Sixteen respondents commented that the proposed definition for ''notifications'' has veered from the original purpose for notifications, which is to notify CCC of significant changes to the MAP Participant's strategic plan. The respondents asked FAS to clarify the definition of notifications and stated the proposed rule would be burdensome to the Participants.

*Response:* CCC agrees with the commenters. Instead of changing the definition of ''notification,'' however, CCC has modified § 1485.14(i) to change when notifications will be required. Notifications are now required only if a MAP Participant wishes to conduct an entirely new activity or if the Participant wishes to increase the funding level for existing, approved activities by more than $25,000 or 25%, whichever is greater. A MAP Participant may make significant adjustments below that threshold without prior notification to CCC, but must still submit a notification alerting CCC of such adjustments no later than 30 days after the change. Finally, CCC has clarified that minor adjustments to existing, approved activities and/or funding levels do not require notification.

*Comment:* Three respondents recommended that the definition of a small-sized entity be expanded for the program by establishing the size eligibility standard to one not exceeding 150 percent of the current Small Business Administration guidelines. The respondents stated that this recommendation would better align the definition with the actual practice in the food processing industry.

*Response:* CCC disagrees. CCC believes it is consistent with the Administration's National Export Initiative to maintain the same definition of small business as the Small Business Administration.

*Comment:* Fourteen respondents suggested the phrase, ''online to MAP and any other USDA market promotion program * * *'' in the ''UES Web site'' definition be changed to ''* * * and any other USDA market development program * * *'' which is more accurate and the terminology used in the subsequent definition of the Unified Export Strategy (UES).

*Response:* CCC agrees with the respondents and has changed the final rule accordingly. In addition, CCC has added an explicit reference to the MAP program to the end of the definition.

*Comment:* One comment was received recommending each definition be given an identifying number or letter so that it is easier to indicate which definition is being discussed.

*Response:* CCC disagrees. CCC believes that providing the definitions alphabetically is adequate for identifying definitions.

*Comment:* Three respondents stated that because ''brand participant'' is defined in the proposed regulation to mean only U.S. agricultural cooperatives that are ''participating in the MAP brand promotion of another MAP Participant,'' the proposed rule does not appear to allow a cooperative to apply for funds to run its own brand program. Therefore, they requested that § 1485.11 (brand participant) and § 1485.13(a) be clarified to make it clear that cooperatives will continue to be eligible to apply directly for a brand promotion program.

One respondent stated that currently cooperatives are allowed to contract directly with FAS to participate in the MAP program to promote the brand that their farmers have developed, own and use, to maximize their returns. This respondent stated that it should be allowed to continue to do so, as this was what Congress intended.

One respondent stated that the reference to ''participating in the brand promotion program of another MAP Participant'' does not always apply and should be deleted from the definition.

*Response:* CCC agrees with these comments and has clarified these sections. CCC has modified the definition of ''brand participant'' to make clear that the term does not include any agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs. CCC has also modified the definition of ''brand promotion'' to include U.S. agricultural cooperatives' promotion of their own brand in their own brand program. CCC has also modified § 1485.15 to delete the phrase ''third party'' before ''brand participants'' as redundant, since the definition of brand participant clearly refers to third parties and not the MAP Participant. CCC has also modified § 1485.17(b)(7) (now § 1485.17(b)(8)) to make clear that the travel expenses of representatives of MAP Participants, including U.S. agricultural cooperatives running their own brand programs, at brand promotions at trade shows are also reimbursable. Finally, CCC has modified § 1485.15(d) to refer to ''entity'' instead of ''company'' in noting that MAP Participants may not provide assistance to a single entity for brand promotion in a single country for more than 5 years.

*Comment:* One respondent stated that the proposed definition of ''foreign third party'' implies that the MAP Participant can select a qualified foreign third party with whom to work. The commenter stated if the proposed definition intends to imply that FAS must give approval of foreign third parties with whom Participants work, then it must be deleted.

*Response:* It is not CCC's intention that CCC would review or approve foreign third parties with whom Participants wish to work. CCC has clarified this definition accordingly to state that a foreign third party is a foreign entity with whom a MAP Participant works to promote the export of a U.S. agricultural commodity under the MAP program.

*Comment:* Three respondents commented that in light of the continued development of agricultural products for non-food use, they proposed that this rule be amended to insert ''non-durable'' between ''and any'' and ''product thereof, excluding tobacco.''

*Response:* CCC disagrees with the respondents' suggestion, as the change would unnecessarily limit the scope of the program. CCC has modified the definition of ''U.S. agricultural commodity'' to preserve the scope of the program as covering all agricultural commodities, regardless of the type of use to which the agricultural product is put. The definition of U.S. agricultural commodity now refers to ''any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish * * *''

*Sec. 1485.12 Participation Eligibility*

CCC received 2 comments on this section.

*Comment:* One respondent stated the current MAP regulations allow U.S. agricultural cooperatives to be a MAP Participant. The proposed rule retained this eligibility but qualified ''U.S. agricultural cooperative'' with the term ''nonprofit.'' The respondent commented that its understanding is that the term ''nonprofit'' in § 1485.12(c) and elsewhere in the proposed regulations is not intended to change the eligibility of cooperatives that are currently participating in MAP and which are considered ''nonprofit'' in the sense that they are entitled to tax treatment afforded by Subchapter T of the Internal Revenue Code Section 1381. The respondent requested that FAS confirm that ''a nonprofit U.S. agricultural cooperative'' as used in the proposed regulations includes U.S. agricultural cooperatives that are entitled to tax treatment afforded by Subchapter T of the Internal Revenue Code (IRC) Section 1381.

*Response:* CCC confirms that U.S. agricultural cooperatives that are entitled to tax treatment afforded by Subchapter T of the IRC Section 1381 are eligible to participate in the MAP program. CCC has deleted the term ''nonprofit'' before ''U.S. agricultural cooperative'' as unnecessary and potentially confusing. CCC has also modified the definition of ''brand participant'' in § 1485.11 and § 1485.12(c) and made conforming edits

to § 1485.13 and § 1485.28(b) to delete the term ''nonprofit.''

*Comment:* One respondent stated its concern that the proposed regulation § 1485.13(a) states that ''applicants'' may apply for the MAP program, but does not define the term ''applicant.'' The respondent was also concerned that § 1485.12 uses the term ''entities'' to describe who can ''participate'' in the MAP, while § 1485.13(a) uses the term ''applicant.'' The respondent was concerned that the two sections do not cross reference each other and that neither term is defined in § 1485.11 ''Definitions.'' The respondent also suggested the proposed regulations be revised as necessary to make clear that ''a nonprofit U.S. agricultural cooperative'' is one of the four entities eligible to participate in MAP under § 1485.12 and is also eligible to be an ''applicant'' and apply directly for MAP under § 1485.13(a), including for its own brand promotion program.

*Response:* CCC does not share the respondent's concerns. CCC believes it is unnecessary to define the terms ''applicant'' and ''entity.'' CCC believes that it is appropriate to use different terms in § 1485.13(a), which deals with those who actually apply to the program and therefore are ''applicants,'' and § 1485.12, which deals with who, in theory, is eligible to apply. The MAP final rule is clear that to participate in the MAP, an entity must be one of four types of entities, one of which is a U.S. agricultural cooperative. Implicit in the concept of being ''eligible'' to participate in the MAP is the notion that eligible ''entities'' are also eligible to be ''applicants'' to the program.

*Sec. 1485.13 Application Process*

CCC received 94 comments on this section. CCC's responses are below. In addition, CCC has included new § 1485.13(d) and (e) to comply with OMB regulations 2 CFR Part 25, ''Universal Identifier and Central Contractor Registration (CCR)'' and 2 CFR Part 170, ''Reporting Subaward and Executive Compensation Information.'' 2 CFR § 25.200 directs federal agencies to include in their regulations issued on or after September 14, 2010 requirements that all applicants for federal financial assistance: (1) Be registered in the CCR prior to submitting an application or plan; (2) maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and (3) provide its DUNS number in each application or plan it submits to the agency. Similarly, pursuant to 2 CFR § 170.200(b), any regulations issued after September 14, 2010 and containing instructions for applicants of grants and cooperative agreements, among other assistance, must require applicants that do not qualify for an exception under 2 CFR § 170.110(b) to have the necessary processes and systems in place to comply with Part 170's reporting requirements if they receive funding.

*Comment:* Two respondents stated that under the current MAP regulations a U.S. agricultural cooperative is eligible to be a MAP Participant and in that capacity to apply directly to CCC for the cooperative's own brand promotion program.

The respondents stated that the proposed regulation at § 1485.13(a) appears to unintentionally change this by providing in the fourth sentence that a MAP applicant (i.e., including a nonprofit U.S. agricultural cooperative) ''may apply to conduct a generic promotion program, a brand promotion program that provides MAP funds to brand participants for branded promotion, or both.'' They requested that FAS confirm that a nonprofit U.S. agricultural cooperative that applies to CCC for its own brand promotion program would be considered a ''MAP Participant,'' not a ''brand participant'' since it would enter into a MAP agreement directly with CCC.

*Response:* CCC agrees with the respondents. CCC did not intend to change this policy and has modified § 1485.13(a) accordingly to explicitly state that an applicant who is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program. As noted previously, CCC has also clarified the definition of ''brand participant'' in § 1485.11 to exclude from that definition any agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

*Comment:* Twenty-one respondents submitted requests for FAS to clarify that electronic copies of applications are no longer required to be submitted through the UES system and only a hard copy is required to be sent.

*Response:* CCC's intent was not to imply that only a hard copy be sent. Applicants have always had a choice to submit either an electronic copy or a hard copy of their application. CCC believes the MAP final rule clearly maintains that choice, but encourages organizations to submit their applications through the UES system, because this format virtually eliminates paperwork and expedites the FAS processing, review, and reimbursement cycles.

*Comment:* Twenty-one respondents questioned if the online version is still required, could it be submitted in a reasonably short time following the deadline?

*Response:* No. Electronic applications may not be submitted after the deadline. CCC is required to publish a Notice of Funds Availability annually in the **Federal Register**. This notice provides 60 days to submit applications either electronically or by hard copy. Applications are required to be submitted by the deadline that is published in the annual notice.

*Comment:* Two respondents provided comments regarding § 1485.13(a)(3)(i)(A) and § 1485(a)(3)(i)(B). They stated they support the requirement that Participants submit a strategic plan; however, to reduce the complexity of the UES process, they recommended that the plan submission remain separate from the current UES process.

*Response:* CCC disagrees. CCC will continue to approve applications that it considers to present the best opportunities for developing and expanding export markets for U.S. agricultural commodities. The strategic planning process is a critical part of the application and therefore must be provided within the UES process in order for the applications to be evaluated in a consistent and equitable manner. This is not a change from current practice.

*Comment:* Sixteen respondents provided similar comments that stated that § 1485.13(a)(1)(i)(R) & (S) both appear to require that the applicant's proposed contribution be stated in both dollar terms and as a percentage of CCC resources requested. They stated that they assume this change is not the intention of CCC, because § 1485.25 of the proposed rule implies that the applicant has a choice between stating its proposed contribution either in dollar terms or as a percentage, as is the case under current MAP regulations. The respondents asked for clarification.

*Response:* CCC agrees with the respondents and has changed the final rule to clarify that the applicant has the choice to propose its contribution in dollar terms or as a percentage of resources requested. Section 1485.13(a)(1)(i)(R) & (S) have been eliminated and new § 1485.13(a)(1)(i)(Q) requires applications to include: ''Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested.''

*Comment:* Sixteen respondents stated that § 1485.13(a)(3)(i)(M), which

introduces the requirement for an evaluation plan as part of the MAP application process, seems to imply that the current practice of ''performance measures'', Country Progress Reports and regular, formal evaluations is not sufficient. The respondents stated that if this is the case the evaluation plan could become an added bureaucratic burden and asked for further clarification of CCC's intent with this new requirement. They also asked for further clarification on whether the evaluation plan is an additional requirement.

*Response:* The requirement for an evaluation plan is not a new requirement. The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including MAP. Section 1485.13(a)(3)(D) of the prior MAP rule required ''[a] statement of goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals.'' In addition, § 1485.14(b)(6)(v) of the previous rule listed as one of the criteria considered by CCC in choosing applications the adequacy of the applicant's strategic plan in the following category ''Description of an evaluation plan and suitability of the plan for performance measurement.'' The new final rule merely clarifies the current requirement to increase each applicant's opportunity for success. To clarify that the evaluation plan is not a new requirement, CCC has combined sub-paragraphs (M) and (E) into one sub-paragraph (E) in § 1485.13(a)(3).

*Comment:* Fourteen respondents stated that the specific mention of the submission of an ''evaluation plan'' in the application process implied that the current submission of goals and performance measures is no longer sufficient. The fourteen respondents also recommended that if such a plan is required, that the Participant's submission be permitted to be brief and generalized.

*Response:* As noted in response to the prior comment, in this final rule, CCC has combined the current regulation's language on goals and performance measures and the new proposed language on evaluation plans into one single sub-paragraph (E) in § 1485.13. CCC notes that evaluation of MAP's effectiveness has been and will continue to be an integral element of program planning and implementation. The adequacy of the evaluation plan has been and will remain one of the criteria in approving applications.

*Comment:* One respondent stated that both § 1485.13(a)(1)(i)(J) and § 1485.14(c)(9) refer to evaluating a request for a brand promotion program based on the percentage of CCC resources that will be made available to small-sized entities. The comment stated that since only small companies are eligible to participate in the branded program, this reference does not appear to be needed and should be deleted.

*Response:* CCC has deleted the references requested by the respondent but for a different reason. The respondent is not correct that only small companies are eligible to participate in the branded program. U.S. agricultural cooperatives are also eligible to participate in the branded program. CCC, however, does not intend for small companies to receive preference over cooperatives. Accordingly, there is no need to determine the percentage of resources made available to small-sized entities, and CCC has eliminated both sections. Large companies remain ineligible for branded programs.

*Sec. 1485.14 Application Review and Formation of Agreements*

CCC has edited § 1485.14(b)(3) to make clear that the preference given to organizations with the broadest producer representation/industry participation applies only with respect to nonprofit U.S. trade organizations. CCC has also clarified § 1485.14(e) and (f) to reflect that the approval letter must also be signed by the MAP Participant and that final agreement occurs when both the program agreement or amendment and the approval letter are signed by both parties. In addition, CCC received 130 comments on this section, set forth below.

*Comment:* Fourteen respondents stated under § 1485.14(c)(8) that ''overhead costs'' and ''direct promotional costs'' are not defined.

*Response:* CCC believes these terms are generally well-understood and that ''direct promotional costs'' in specific is self-explanatory. CCC, therefore, does not deem it necessary to define these terms in the final rule. Moreover, this language remains unchanged from the current rule that has been in place for 15 years. Section 1485.14(c) explains the allocation factors used by CCC to determine which applications to approve. Subsection (c)(8), which notes that CCC will review general administrative and overhead costs compared to direct promotional costs, merely reflects CCC's preference that program funds be used for promotional expenses rather than administrative expenses. CCC has modified § 1485.14(c)(8) to make clear that CCC will review proposed MAP-funded general administrative and overhead costs compared to proposed MAP-funded direct promotional costs.

*Comment:* With respect to § 1485.14(c)(8), fourteen respondents questioned how CCC compares salaries of staff with technical expertise and who execute programs with the fees of consultants who do similar work. The respondents stated that they felt the wording made an overly simplistic distinction between administration and promotional expenses.

*Response:* CCC disagrees that the wording of § 1485.14(c)(8) is overly simplistic. However, this comment raises an issue that requires further clarification of § 1485.11's definition of ''administrative expenses or costs.'' The MAP final rule now deletes the phrase ''that are not directly identifiable with a specific market promotion activity'' from the proposed definition of administrative expenses or costs. Administrative expenses or costs now are defined as those ''expenses or costs of administering, directing, and controlling an organization that is a MAP Participant * * * [including costs related to personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training)]'' regardless of whether they are specifically identifiable with a specific market promotion activity. As proposed § 1485.16(c) and § 1485.17(d)(26) made clear, home office domestic administrative expenses, including salaries of U.S. home office staff who execute MAP activities, are generally not reimbursable under MAP, and the Participant must use its own funds to pay any administrative costs of its U.S. offices. This is not a change from the prior regulations. This change to the definition of ''administrative expenses or costs'' makes the definition consistent with these sections.

Pursuant to § 1485.17(c)(1) and (11), however, MAP funding is available, for generic promotion only, to pay for the compensation of a U.S. citizen employee or U.S. citizen contractor stationed overseas, as well as the administrative costs for overseas offices approved in MAP program agreements. In evaluating applications for MAP funding of overseas offices, as reflected in § 1485.14(c)(8), CCC generally prefers that MAP funding be directed toward promotional expenses rather than administrative expenses. It is true that salaries of overseas office staff with technical expertise are still considered administrative expenses even if the staff execute MAP activities, whereas fees of consultants who do similar work would be classified as promotional expenses.

However, applicants are free to explain in their applications what promotional activities overseas office staff are anticipated to conduct.

*Comment:* One respondent stated that the wording in § 1485.14(c)(8) regarding factors affecting allocations does not provide for any distinction when making allocation decisions between time salaried staff spend on ''administrative functions'' (usually a minor amount of time spent by higher paid staff) and time spent making use of technical expertise to execute programs and provide information to importers and processors, which are the main reasons for employing higher paid staff.

*Response:* See response to prior comment. CCC does not believe that § 1485.14(c)(8) must distinguish between time salaried staff spends on ''administrative functions'' and time salaried staff spends on executing MAP activities. All time spent by salaried staff is considered general administrative and overhead costs, not direct promotional costs, as clarified in the revised definition of ''administrative expenses or costs.'' As noted in CCC's response above, applicants are free to explain in their applications what promotional activities overseas office staff are anticipated to conduct.

*Comment:* One respondent in a comment to § 1485.29 stated further clarification was needed regarding the eligibility of contracts with U.S. based organizations that are retained to implement or assist with approved international market development efforts. This respondent stated the proposed regulations do not completely clarify those domestic contracts that would be deemed eligible for reimbursement and those that would not be.

*Response:* CCC's current practice is to reimburse MAP Participants' expenditures for contracts with U.S. based organizations retained to implement or assist with approved international market development efforts, except when the U.S. based organization is also providing administrative services to the MAP Participant's U.S. office(s). In other words, if a U.S. based organization assumes any functions related to the administration, direction or control of the MAP Participant's U.S. office(s) in a program year, then no activity of any type undertaken by this organization in the United States or overseas during that program year, including direct promotional services overseas, will be reimbursable with MAP funds. CCC has codified this current practice in new § 1485.17(b)(19).

Note that this prohibition does not apply when the U.S. based organization is providing administrative services to an approved MAP funded overseas office (as opposed to the U.S. home office). In that case, the activities provided by the organization are reimbursable whether they are administrative or direct promotion under the MAP final rule, so long as the organization is not also providing administrative services to the MAP Participant's U.S. office(s) in the same program year.

*Comment:* Nineteen respondents provided similar comments in reference to § 1485.14(i), stating that the current notification process serves CCC's and the Participant's purposes. A number of the respondents stated that although they believed some formalization of the process may be necessary, the proposed requirement to notify CCC of any budgetary change that is at least $10,000 or more is burdensome. They stated that approval is only relevant at the constraint level and that acknowledgement of an activity level change would be more appropriate. The respondents also recommended that notification level be increased to $25,000, to reflect the greater impact of an activity funded at this level.

Several of the comments stated that the language ''may make adjustments only if it submits a notification'' implies that any change to an activity, regardless of how minor, requires a notification. The respondents suggested that while the regulations should certainly provide that activities can be changed, details of when a notification is required could be more appropriately addressed in a separate policy clarification. One respondent stated that if CCC has identified the need to track budget changes more closely, they recommend that it adopt a policy based on a percentage change rather than a dollar value and that the percentage be no less than 25 percent of an existing budget amount. The respondent further stated that FAS staff should be required to use the UES system for approving such changes and that approval should not be based on a default period of 15 days.

*Response:* CCC disagrees that the ''current notification process'' serves CCC's purposes. However, in response to the above comments, CCC has modified § 1485.14(i) to reduce the burden of notifications, adopting several of the changes requested by commenters. For example, CCC has increased the threshold to $25,000 for requiring notification to CCC of changes to existing activities. This notification must occur before the change is implemented, but no approval is required. Similarly, CCC will require notifications for adjustments below that threshold only if the change is significant. No notification is required for minor changes in existing, approved activities or for deleting an activity.

*Comment:* Two respondents stated that MAP Participants' current practice of reallocating funds among brand participants in the MAP Participants' branded programs has allowed MAP Participants to expand brand participation by as much as 40 percent per year. Therefore, they strongly oppose proposed § 1485.14(i)(2)(i), which would require MAP Participants to notify CCC of any increase in the funding level for existing, approved activities addressing a single constraint or opportunity by more than $10,000 or 20 percent of the approved funding level, whichever is greater. They further stated that imposing a hard budget ceiling and requisite advance notification would severely limit the flexibility for MAP Participants with branded programs to reallocate funds from companies that are unable to utilize them in favor of those that can.

*Response:* Respondents are mistaken that § 1485.14(i)(2)(i) requires a MAP Participant to notify CCC of any reallocation of funds among the Participant's branded program participants. The notification requirement does not apply at the brand company level for a MAP Participant operating a brand program. The brand program is approved by CCC at the program level, not at the company level. CCC simply approves of the Participant's brand program in the aggregate; CCC does not review or approve a MAP Participant's allocation of funds among brand participants in its branded program.

*Comment:* Fourteen respondents stated they support the self-certification requirement by small-sized entities participating in a MAP Participant's activities in the branded program area. In addition, CCC received some comments encouraging CCC to be consistent in its policy to exclude large companies from the program. The respondents stated that currently large companies cannot apply and receive MAP funding directly; however, a marketing company representing a large company may obtain assistance through a SRTG. The respondents recommended that the applicant company as well as the brand owner be required to certify that they meet SBA's criteria of being a small company.

*Response:* CCC disagrees with respondents' recommendation that the brand owner certify that it is a small company. It is not CCC's intention to

limit the products that small export trading companies can market under the MAP branded program, regardless of the size of the company producing the product marketed. CCC believes that it is appropriate for a small export trading company to promote its ability to consolidate export shipments that include products made by a wide range of companies.

*Sec. 1485.15 Operational Procedures for Brand Programs*

CCC received 32 comments on this section. CCC has also modified § 1485.15(c)(6) to include additional terms that are acceptable origin identification, currently set forth in MAP Notice 97–020. In addition, CCC has modified § 1485.15(c)(6) to advise that CCC may temporarily waive the U.S. origin labeling requirement where CCC has determined that such labeling will likely harm sales rather than help them.

*Comment:* Three respondents made similar comments in reference to § 1485.15(a). One respondent recommended that the requirement for an annual submission of program operational procedures be changed to require FAS approval only once, after which FAS would merely be notified of any changes. Two respondents proposed that the review of procedures and documents used to administer the branded program be conducted during the annual compliance review.

*Response:* CCC disagrees with the recommendation to remove the annual requirement and has retained the requirement for an annual submission of program operational procedures even if there are no substantial changes in the procedures. CCC expects that any MAP Participant that is operating a brand program would review its procedures and documents annually.

CCC disagrees with the respondents' proposal to have CCC review the procedures during the annual compliance review in lieu of a separate submission. The purpose of the CCC review is to approve a plan at the start of a program year, before the program begins operation. Moreover, during the compliance review, CCC may review the implementation of the plan, rather than the plan itself.

In response to other comments requesting additional time for implementation, CCC has delayed the effective date of this final rule until the MAP Participant's 2013 program year (either 01/01/2013 or 07/01/2013). CCC has deleted the requirement in § 1485.15(a) that the MAP Participant must submit its proposed brand program operational procedures not later than 21 days prior to signing participation agreements with brand participants. CCC has modified § 1485.15(a) to note that CCC will notify all new and existing MAP Participants in writing in each Participant's annual approval letter and through the FAS web site as to applicable submission dates and dates for approvals of brand program operation procedures.

*Comment:* Two respondents commented on § 1485.15(a). One respondent requested that FAS confirm that § 1485.15(a) does not apply to a U.S. agricultural cooperative that is a MAP Participant and operates the cooperative's own brand promotion program. Another respondent commented that this section appears to apply to MAP Participants that administer brand promotion programs on behalf of third party brand participants that do not have a direct agreement with CCC. The respondents requested clarification be made on whether this section does not apply to U.S. nonprofit agricultural cooperatives that are MAP Participants operating their own brand program.

*Response:* CCC confirms that § 1485.15(a) applies only to MAP Participants that operate brand promotion programs that include third party brand participants, and does not apply to U.S. agricultural cooperatives that operate their own brand programs. CCC has amended the definition of brand participant in § 1485.11 to make clear it does not include a U.S. agricultural cooperative operating its own brand program.

*Comment:* One respondent stated that § 1485.15(b) and § 1485.15(c) seem to imply that contracts between cooperatives and third party participants be preapproved by CCC each year. The respondent stated that this requirement is unreasonable and burdensome since nonprofit farmer owned cooperatives carefully protect their farmer members and their brand on each and every contract into which they enter.

*Response:* CCC disagrees that § 1485.15(b) and § 1485.15(c) imply that CCC pre-approves a MAP Participant's contracts with brand participants. Section 1485.15(b) simply requires that the MAP Participant's proposed operational procedures be pre-approved by CCC. It does not require CCC to pre-approve individual contracts. Section 1485.15(c) simply sets forth items that must be addressed in each contract with a brand participant. As discussed above, U.S. agricultural cooperatives operating their own brand program are not ''brand participants.''

*Comment:* Six respondents stated that § 1485.15(c)(7) should include ''small-sized entity or cooperative.''

*Response:* CCC agrees and has made the requested change.

*Comment:* CCC received one comment asking whether a MAP Participant who had previously received an approval from CCC to use origin identification terms other than those appearing in the current regulations would have to re-submit these terms again for approval when the new regulations become effective.

*Response:* CCC understands the commenter to be referring to § 1485.15(c)(6), which lays out the requirement that MAP activities identify the U.S. origin of the promoted products. CCC considers that an approval under the previous regulations would constitute an approval under the new regulations. A MAP Participant would not have to re-submit these terms again for approval under the new regulations.

CCC has also modified § 1485.15(c)(6) to include additional terms that are acceptable origin identification, currently set forth in MAP Notice 97–020. Specifically, CCC has added the terms ''American'', ''United States of America'', as well as any state or territory of the United States of America spelled out in its entirety. Section 1485.15(c)(6) also now clarifies that the use of approved origin terms as a descriptor or in the name of the product (e.g., Texas style chili, Bob's American Pizza) does not satisfy the product origin requirement. Section 1485.15(c)(6) also now encourages the phrases ''product of'', ''grown in'' or ''made in'', but does not require them. MAP Notice 97–020 will be removed from the FAS Web site.

In addition, CCC notes that in certain situations, CCC has temporarily waived the requirement to identify the U.S. origin of products promoted under the MAP brand program. For example, current MAP Notice 09–007 temporarily waives this requirement for MAP brand activities conducted in certain Middle East countries. Accordingly, CCC has modified § 1485.15(c)(6) to advise that CCC may temporarily waive the U.S. origin labeling requirement where CCC has determined that such labeling will likely harm sales rather than help them and that such determinations will be announced to MAP Participants via a MAP notice issued on FAS' Web site. MAP Notice 09–007 will continue to be available on the Web site for informational purposes and reflects CCC's current administration of the MAP program.

*Comment:* One respondent stated that 5 years is an unreasonable time to keep records, stating that the IRS requires records to be kept for only 3 years.

*Response:* CCC disagrees with the respondent. The Agricultural Trade Act of 1978, as amended, at 7 U.S.C. 5662(a)(1) requires the Secretary of Agriculture ''to require by regulation each exporter or other participant under the [MAP and other] program[s] to maintain all records concerning a program transaction for a period not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records.''

*Comment:* Five respondents asked CCC to clarify whether cooperatives were still exempt from the 5-year graduation rule or if this had changed.

*Response:* CCC understands the commenters to be referring to the statutory provision in 7 U.S.C. § 5623 note, which states that MAP assistance may not be provided to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program. Currently, CCC exempts U.S. agricultural cooperatives from the 5 year rule. CCC determined in 1998 that continued support for U.S. agricultural cooperatives was necessary to meet MAP's objectives, and that determination remains in place. CCC will publish this determination in a MAP notice on the FAS Web site.

*Comment:* Three similar comments stated that the ''Sunset Rule'' should be deleted. The respondents suggested that if the rule is maintained, then it should apply to a specific market and not to a country. One respondent stated that the 5-year limitation is the single greatest barrier to program participation and recommended that the country limitation be extended to 8 years per market. Another respondent recommended that export trading companies be considered for exemption from the 5-year limitation, if it can be proven that any additional marketing efforts after 5 years will be for different products beyond those previously marketed.

*Response:* CCC understands the commenters to be referring to the statutory provision in 7 U.S.C. § 5623 note, which states that ''[t]he Secretary should not provide assistance under the [MAP] program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program.'' Because the 5-year limitation is established by statute, CCC cannot extend the country limitation to 8 years as requested by the respondents. While the statute provides the Secretary the discretion to waive the graduation requirement in individual circumstances where the Secretary believes such further assistance is necessary to achieve the goals of MAP, CCC has no authority to ''delete'' the ''Sunset Rule'' as requested by the commenters. CCC also disagrees with the comment that the ''Sunset Rule'' be applied to a specific market and not to a country. CCC has defined ''market'' in the proposed and final rules to mean the country or countries targeted by an activity. Lastly, CCC does not have any information that suggests that exempting export trading companies from the 5-year limitation is necessary to achieve the goals of MAP. CCC retains the discretion to waive the 5-year limitation, if CCC determines that further assistance in a particular situation is in the best interests of the MAP.

*Comment:* Two respondents commented that they supported continuing exemptions for international shows that reflect a broad international attendance.

*Response:* CCC understands the commenters to be referring to CCC's practice, as reflected in MAP Notice 09–005, of not counting a Participant's attendance at certain international trade shows when determining whether a specific branded product has been promoted in a single market for more than 5 years. CCC will continue this practice and has codified it in § 1485.15(d) of the MAP final rule.

Many international trade shows feature buyers and sellers from many countries. Many of the shows are held in the same country annually or biannually (e.g., SIAL and ANUGA are held in alternating years in France and Germany, respectively). Many U.S. companies attend such shows to meet with buyers from many countries, not just the host countries. However, given that CCC may not provide assistance to a single company for brand promotion in a single country for more than 5 years, many small brand companies would face graduation from a host country after exhibiting at one of these international trade shows for five years, even if the companies have had no other activities in that country and participating in the show is used exclusively as a gateway for developing customers in other countries.

Therefore, to further the objectives of MAP, CCC has determined that brand participants' participation in certain international trade shows in foreign countries will not be considered when determining such participants' time in country for purposes of the 5 year graduation requirement. Specifically, as reflected in MAP Notice 09–005, CCC has compiled a list of international trade shows that CCC ''exempts'' from the graduation requirement. A show on this list meets two requirements: (1) It is a food or agricultural show, with no less than 30% of exhibitors selling food or agricultural products, and (2) it is an international show, meaning it targets buyers, distributors and the like from more than one foreign country and no less than 15% of the show's visitors are from countries other than the host country.

CCC is not planning on changing its practice and has codified MAP Notice 09–005 in § 1485.15(d). MAP Notice 09–005 will be removed from the FAS Web site, as parts are now redundant with the final rule, and a new MAP notice will be posted on FAS' Web site listing the international trade shows that CCC ''exempts'' from the graduation requirement. If a MAP Participant believes that a show should be added to this list, the Participant should contact FAS.

*Comment:* One respondent stated that because they do not have the facilities for conducting investigations of corporate ownership structure, they proposed that the current process of self-certification continue.

*Response:* CCC notes that § 1485.15(c)(7) as proposed allowed brand participants to self-certify as to status as a small-sized entity and that the final rule continues the current process of self-certification.

*Sec. 1485.16 Contribution Rules*

CCC received 20 comments on this section. Below are CCC's responses. In addition, CCC has clarified in § 1485.16(c) that a MAP Participant's U.S. office's administrative costs may be included in calculating the amount of contributions the MAP Participant contributes to MAP activities. Similarly, CCC has clarified in § 1485.16(d)(2) that contributions are subject to the MAP regulations and the applicable OMB circulars on cost principles, to the extent these principles do not directly conflict with the provisions of this subpart. In addition, CCC has removed the cross-reference to § 1485.16(c) in § 1485.16(d)(2) as unnecessary.

*Comment:* Fourteen respondents provided similar comments in reference to § 1485.16, stating it would be clearer to begin the subpart by stating that any expense that is listed as eligible for reimbursement can also be considered a

contribution if paid with industry funds. The respondents stated that then the list would only need to state what is not eligible as a contribution, the assumption being that anything that is not listed is eligible. They stated this change would greatly reduce the confusion over items which now appear in both places, sometimes with slightly different wording.

*Response:* CCC believes that eligible contributions are clear as presented in § 1485.16. CCC notes that § 1485.16(d)(2)(xxi) specifically provides that ''the cost of any activity expressly listed as reimbursable in this subpart'' may be considered a contribution if paid with Participant or industry funds.

*Comment:* One respondent stated that this section does not specifically mention industry travel expenses as being counted as a contribution. This respondent stated that it urges FAS to specifically state that industry travel and other industry expenditures that are in support of the broader mission of Participants be listed as eligible to count toward contributions.

*Response:* CCC allows domestic travel expenses paid by the Participant to be counted as a contribution, pursuant to § 1485.16(d)(2)(xvii). Additionally, at § 1485.16(d)(2)(xxi), CCC allows to be counted as a contribution the cost of any activity paid by the Participant and expressly listed as reimbursable in this subpart, which includes travel. In response to the comment, however, CCC has modified the definition of ''contribution'' in § 1485.11 to include explicitly expenditures made by entities in the MAP Participant's industry in support of the entities' related promotion activities in the markets covered by the MAP Participant's agreement.

*Comment:* One respondent stated the proposed rule § 1485.16(d)(2)(xvi) reads eligible contributions include ''fees for participating in U.S. Government activities'' and it requested clarification of the term ''U.S. Government activities.''

*Response:* From time to time, the U.S. Government financially sponsors activities or endorses activities, particularly overseas, that promote export opportunities. These could include trade shows, trade missions, restaurant promotions, or a variety of other activities. To clarify this further, CCC has modified § 1485.16(d)(2)(xvi) to note that the activities are ''U.S. government sponsored or endorsed export promotion activities.'' CCC has made a corresponding edit to § 1485.17(d)(21).

*Comment:* One respondent commented that the proposed regulation at § 1485.16(b) provides that ''in MAP brand promotion programs, a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.'' It suggested that to be consistent with the quoted language, and with the understanding that a brand promotion program can be operated by a MAP Participant, as well as a brand participant, the phrase ''a brand participant'' in § 1485.16(b) should be replaced with ''a brand participant or Participant'' or similar language.

*Response:* CCC agrees with the comment and has modified § 1485.16(b) accordingly.

*Sec. 1485.17 Reimbursement*

CCC received 330 comments on this section. Below are CCC's responses to the comments. In addition, CCC has clarified various provisions. For example, CCC has made explicit in § 1485.17(b) that reimbursements are subject to the MAP regulations and the applicable OMB circulars on cost principles, to the extent these principles do not directly conflict with the provisions of this subpart. CCC has also modified § 1485.17(c)(8) to codify CCC's current practice of requiring MAP Participants to provide documentation establishing the full fare economy class rate to support their reimbursement claims, as well as clarify that international travel expenses for activities that occur inside or outside the United States are reimbursable. In addition, CCC has deleted § 1485.17(c)(9), which provided that per diem was reimbursable, because it is redundant with § 1485.17(c)(8) (which now explicitly includes per diem). Section 1485.17(c)(8) allows the reimbursement of ''international travel expenditures,'' which include transportation, per diem, and miscellaneous expenses.

CCC has also added § 1485.17(b)(17), which allows for reimbursement of international travel expenditures (e.g., transportation, per diem, and miscellaneous expenses) for brand companies participating in foreign trade missions subject to certain conditions. This codifies MAP Notice 03–004. MAP Notice 03–004 will be removed from the FAS Web site.

Similarly, CCC has codified MAP Notice 01–004 in new § 1485.17(b)(18). MAP Notice 01–004 describes CCC's longstanding practice of limiting reimbursement of expenditures related to retail, trade, or consumer exhibits or shows, whether held inside or outside the United States, where USDA has sponsored or endorsed a U.S. pavilion at the exhibit or show. In that situation, MAP funds are used to reimburse the travel and/or non-travel expenditures of only those MAP Participants located within the U.S. pavilion. CCC believes it is important to maintain a unified U.S. presence at these shows, with all exhibitors contributing fairly and supporting the U.S. pavilion. MAP Notice 01–004 will be removed from the FAS Web site.

Finally, CCC has added a cross reference to § 1485.17(d) in § 1485.17(b) and § 1485.17(c).

*Comment:* Three respondents provided similar comments in reference to § 1485.17(b)(4). Two comments stated that the rule as written may be interpreted to allow the cost of product samples to be reimbursed. The respondents stated that ''[a]s written, this rule may be interpreted to allow the cost of promotional samples themselves to be reimbursed. We feel that the existing approach, in which costs of *distributing* samples are eligible, but the costs of the samples *themselves* are not, remains appropriate within WTO eligibility. *We recommend that this be clarified.''*

One comment stated that the current MAP regulations limit the reimbursement of giveaways to U.S. dollars and suggested that the maximum reimbursement be increased to reflect inflation since the 1980s.

One respondent stated that the purchase of samples locally on a case-by-case basis with a maximum cost per sample not to exceed the allowable cost of a premium should be allowed.

*Response:* CCC's practice has been and continues to be that the cost of product samples is not reimbursable under MAP. In response to the first commenters above, CCC has clarified this issue and modified § 1485.17(b)(4), which provides that the costs of in-store and food service promotions, product demonstrations, and distribution of promotional samples are reimbursable. Section 1485.17(b)(4) now explicitly notes that the purchase of product samples are not reimbursable and replaces the term ''promotional samples'' with ''product samples.'' CCC also notes that § 1485.17(d)(5) already specifically prohibits the reimbursement of the cost of product samples. In addition, as noted above, CCC has modified § 1485.11 to include a definition of ''product samples.''

CCC disagrees with the view that the costs of product samples should be reimbursed.

CCC does not agree with the commenter requesting that the current MAP regulation's limit on the

reimbursement of giveaways be increased or that it be codified in the MAP final rule. As noted above, CCC observes that the cost of samples of the promoted MAP product are not reimbursable, regardless of whether the samples are giveaways or not. Regarding the reimbursement of giveaways of non-MAP promoted products in general, the MAP final rule is written in a way to allow CCC to counter inflation, without unduly limiting its flexibility. As discussed below in CCC's response to similar comments, rather than specify a reimbursement amount for giveaways in § 1485.17(b)(11), CCC will set a reimbursement limit during the course of its administration of MAP and change that limit, as necessary, with appropriate notice to MAP Participants through written MAP notices posted on FAS' Web site.

*Comment:* Three respondents commented in reference to § 1485.17(b)(8) supporting the inclusion of eligibility of subscriptions. All recommended that CCC change the wording to remove the words ''to publications'' and instead state that ''CCC will reimburse in whole or in part subscriptions that are of a technical, economic, or marketing nature and relevant to the approved activities.''

One respondent proposed adding language to allow for expenditures when the internet is used as a staff resource. It gave as an example for market intelligence, economic data, and key policies and procedures to be accessible via their internet site to their international offices and U.S. staff worldwide.

*Response:* CCC agrees with the first general comment and has modified § 1485.17(b)(8) (now § 1485.17(b)(9)), as some appropriate subscriptions could be to web-based information that may not traditionally be thought of as ''publications.'' CCC has also made a corresponding change to § 1485.16(d)(2)(x). CCC does not agree with the second comment to add language to allow reimbursement of internet expenditures because, as submitted, this appears to be a function of the MAP Participant's home office, and, thus, is not reimbursable under the program unless otherwise authorized in § 1485.17(c)(22).

*Comment:* Fourteen respondents commented regarding proposed § 1485.17(b)(9) (now § 1485.17(b)(10)), which provided that the cost of ''demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of discrete promotional activities'' is reimbursable. These respondents were concerned with the use of the word ''discrete'' in the preceding language. Several commented that they presume that the use of the term ''discrete'' applies to or refers to any approved activities such as described in the regulations. The respondents stated that it would be clearer to use the term ''individual'' rather than ''discrete,'' as that might better define the activity.

*Response:* CCC agrees with the respondents and has made the suggested change substituting the term ''individual'' for the term ''discrete'' in the final rule for clarity.

*Comment:* Fifteen respondents provided similar comments in regard to proposed § 1485.17(b)(10) (now § 1485.17(b)(11)), which provided that the cost of giveaways, awards, prizes, gifts and other similar promotional materials is reimbursable, subject to such reimbursement limitation as CCC may, from time to time, determine and announce in writing to all MAP Participants and on the FAS Web site. The respondents stated that they presume that announcements pertaining to the reimbursement limitations will be in the form of Program Announcements or similar instruments. Four stated that they agree with the need for flexibility in this area and supported CCC's approach.

*Response:* CCC understands that the commenters are referring to CCC's practice of issuing Market Access Program notices. MAP Notice 97–002 currently sets out a $1.00 reimbursement limit for promotional items (which does not include product samples). It also sets out the conditions under which such reimbursement is available. CCC has determined to codify MAP Notice 97–002, in part. Section 1485.17(b)(11), which allows reimbursement for giveaways, awards, prizes, gifts and other similar promotional materials, now notes that reimbursement is available only when: (1) the items are described in detail with a per unit cost in an approved strategic plan and (2) distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item.

CCC believes that specifying a dollar amount in the new MAP regulations is unnecessarily restrictive and does not provide CCC sufficient flexibility to deal with changing economic circumstances such as inflation. Therefore, rather than specify a reimbursement amount in § 1485.17(b)(11), CCC will retain the proposed rule's discretion. Thus, CCC will set a reimbursement limit during the course of its administration of MAP and change that limit, as necessary, with appropriate notice to MAP Participants through written MAP notices posted on FAS' Web site. MAP Notice 97–002 will be removed from the FAS Web site, and a new notice will be issued setting forth a reimbursement allowance for giveaways, awards, prizes, gifts and other similar promotional materials.

*Comment:* One respondent commented in reference to § 1485.17(b)(12) and couponing. The commenter suggested that CCC allow ads to be reimbursed if the ad contains coupons for other products but does not contain a coupon for MAP Participant products.

*Response:* CCC confirms that reimbursement is allowed if ads contain coupons for other products but do not contain a coupon for MAP Participant products. In response to the commenter, CCC has revised § 1485.17(b)(12) (now § 1485.17(b)(13)) to make clear that only the design, production and distribution of coupons for products other than the MAP Participant's promoted products are reimbursable.

In addition, CCC has revised § 1485.17(b)(1), which allows advertising to be reimbursed, including advertising of price discounts, to make clear that advertising associated with coupons or price discounts for MAP-promoted products is not reimbursable. CCC has also modified both provisions to note that if otherwise reimbursable advertising or coupon activities include both coupons or price discounts for products other than the MAP Participant's promoted products as well as for the MAP-promoted products, expenditures for such activities will not be reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement). This codifies MAP Notice 05–001, which will be removed from the FAS Web site.

Finally, CCC has modified § 1485.17(d)(9) to clarify that CCC will not reimburse the cost of any coupon redemption or price discounts ''of the MAP promoted commodity.''

*Comment:* Sixteen similar comments were received regarding § 1485.17(b)(12) and the design, production and distribution of coupons. The respondents requested that CCC clarify if this section is applicable to both branded and generic. Three comments stated that they strongly support the clarification to incorporate the eligibility of coupon design, production and distribution.

In addition, eighteen respondents stated that clarification was needed regarding what is covered as ''branded,'' as ''generic,'' or as both, throughout the regulations. Two respondents stated that the language listed in § 1485.17(b)(1)

through § 1485.17(b)(15) seems to describe expenses eligible for entities conducting a branded program, and that expenses listed from § 1485.17(c) through § 1485.17(d) addressed generic only. They requested clarification if this understanding was correct.

Another similar comment was received which stated that more specificity was needed for branded and generic reimbursement rules. One respondent stated that since Web site costs were previously not considered an eligible branded expense and the eligibility of subscription costs and audit costs do not appear to pertain to the branded program, they would like confirmation that CCC now intended for these expenses to be eligible for both the generic and branded programs.

Two respondents stated that in reference to § 1485.17(c)(16), the proposed rule should make it clear that branded programs are specifically included.

*Response:* CCC has modified § 1485.17(b) to clarify that it addresses both brand and generic promotional activities. Therefore, all subparagraphs under § 1485.17(b) are applicable to both generic and branded programs, including § 1485.17(b)(9) (allowing subscription costs), § 1485.17(b)(13) (allowing certain coupon costs), § 1485.17(b)(14) (allowing certain audit costs) and § 1485.17(b)(16) (allowing Web site costs).

Section 1485.17(c) addresses generic promotional activities only.

Section 1485.17(d) was removed and the text of that section added to the definition of generic promotion in § 1485.11. Subsequent subsections of § 1485.17 have been reordered.

As discussed above, CCC does not reimburse the design, production or distribution of coupons for the MAP Participant's promoted products. CCC has modified § 1485.17(b)(12) (now § 1485.17(b)(13)) to make this clear.

Finally, CCC disagrees with the respondents who requested that branded programs be included in § 1485.17(c)(15), which reimburses market research for generic promotions only. That section will remain applicable only to generic promotions.

*Comment:* Fourteen respondents commented in reference to ''audits'' referenced in § 1485.17(b)(13) (which allowed for reimbursement of an audit of a MAP Participant that was required by the applicable parts of this title if the MAP is the Participant's largest source of federal funding), § 1485.17(c)(17) (which allowed for reimbursement of independent evaluations or audits not otherwise required by CCC if performed to ensure compliance with program agreement or regulatory requirements), and § 1485.17(e)(16) (which provided that CCC will not reimburse Participants for independent evaluations or audits if CCC determines such evaluation or audit is needed to confirm past or ensure future program agreement or regulatory compliance). The respondents requested further clarity on when CCC will pay for an audit. They also stated that references to ''applicable parts of this title'' should be avoided and instead, clear language should be provided. For example, the respondents asked whether, in light of § 1485.17(b)(13), which provides for reimbursement for A–133 audits, § 1485.17(c)(17) means MAP will pay for other audits that give the Participant assurances that it is in compliance with MAP rules, i.e., operational or forensic audits. Six respondents also provided similar comments in reference to § 1485.17(e)(16), questioning if all financial audits were not reimbursable. The respondents also asked if OMB Circular A–133 audits were reimbursable given that this is not required by CCC but by the federal government.

*Response:* In response to these comments, CCC has modified § 1485.17(b)(13) (now § 1485.17(b)(14)) to clarify that this section refers to OMB Circular A–133 audits. Thus, for brand and generic promotions, such audits are reimbursable if the MAP is the MAP Participant's largest source of Federal funding.

Also in response to these comments, CCC has clarified § 1485.17(c)(17) (now § 1485.17(c)(16)). That section now provides that it is subject to the limitations set out in § 1485.17(d)(which now lists items for which CCC will not reimburse Participants). CCC has also deleted the reference to ensuring compliance with ''regulatory requirements'' in this section. Section 1485.17(c)(16) now provides that for generic promotions only, independent evaluations and audits not otherwise required by CCC to ensure compliance with program requirements are reimbursable. CCC observes, however, that, as noted in new § 1485.17(d)(31), expenditures associated with a MAP Participant's creation or review of its fraud prevention program, contracting procedures, or brand program operational procedures are not reimbursable.

With respect to the comments questioning whether § 1485.17(e)(16) prohibits reimbursement of all financial audits, CCC confirms that 1485.17(e)(16) (now § 1485.17(d)(16)) prohibits reimbursement only of evaluations or audits that are required by CCC to confirm past or to ensure future program agreement or regulatory compliance. This is not a change from the current regulations. Finally, CCC notes that this section does not prohibit reimbursement of OMB Circular A–133 audits, which is specifically allowed, under the appropriate circumstances, per § 1485.17(b)(14).

CCC disagrees with the comments that the MAP final rule should avoid references to ''applicable parts of this title.'' As noted in § 1485.10 of both the proposed and final rules, USDA regulations other than the MAP final rule also apply to USDA recipients of federal financial assistance. Some regulations apply to all MAP Participants. Others apply only to certain categories of MAP Participants. Because of the varied nature of MAP Participants, it would be unwieldy to specify which other regulations apply and when for each provision in the MAP final rule. However, in response to the comment, wherever the MAP final rule has explicitly referred to ''applicable parts of this title,'' CCC has added illustrative examples of what parts potentially apply to different MAP Participants.

In addition, CCC notes that § 1485.10(b) provides an illustrative list of other USDA regulations of general application that may apply to MAP and MAP Participants. The section also puts MAP Participants on notice that they must comply with the relevant provisions of the CCC Charter Act and Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

Finally, in response to the comments, CCC has also added new § 1485.10(b)(4), which lists additional laws and regulations that are applicable to MAP Participants.

*Comment:* Fourteen similar comments stated that previous policy guidance announced reimbursement of the costs of developing, updating, and servicing non-branded web sites on the internet and stated that they seek clarification on whether this new regulation supersedes the previous guidance. Three comments also stated that they strongly supported web site development expenses being eligible for both branded and generic programs.

*Response:* CCC understands that the commenters are referring to CCC's practice of issuing Market Access Program notices. CCC issues these MAP notices for informational purposes. While these notices have no legal effect, they alert MAP Participants to information regarding the administration of the MAP program that

CCC believes is beneficial to share with MAP Participants.

CCC confirms that the MAP final rule sets out the reimbursement rules for MAP Participants and supersedes all prior inconsistent guidance. Specifically, § 1485.17(b)(15) (now § 1485.17(b)(16)), applicable to both brand and generic activities, and § 1485.17(c)(31), applicable to generic activities, provide that CCC will reimburse, in part or in whole, the cost of developing, updating and servicing certain types of Web sites. In response to the comments, however, CCC has modified § 1485.17(c)(31) to include additional conditions regarding Web site content that CCC currently requires as a condition of reimbursement, as reflected in MAP Notice 01–003. MAP Notice 01–003 has thus been codified and will be removed from FAS' Web site. Section 1485.17(c)(31) now provides that expenditures associated with developing, updating, and servicing Web sites on the Internet are reimbursable if the Web sites: (1) Contain a message related to exporting or international trade, (2) include a discernible ''link'' to the FAS/Washington homepage or an FAS overseas homepage, and (3) have been specifically approved by the appropriate FAS commodity division. Expenditures related to Web sites or portions of Web sites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for Web sites that include any sort of ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access.

Finally, CCC notes that § 1485.16(b) provides that in MAP brand promotion programs, MAP Participants must contribute at least 50% of the total eligible expenditures made on each approved brand promotion. At this time, CCC reimburses qualified Web site expenses 100% for generic promotions and 50% for brand promotions.

*Comment:* Ten respondents provided comments in regard to § 1485.17(c)(8). They questioned under what circumstances business class travel would be reimbursed. The commentators stated that they felt it would be reasonable to be reimbursed for business class rate for flights over a specific duration (i.e. over 12 hours).

*Response:* CCC recognizes that circumstances might arise where business class flights may be necessary. Thus, CCC has modified § 1485.17(c)(8) of the proposed rule. Originally, that section as proposed provided that CCC would determine a policy regarding the appropriate circumstances when business class rates would be acceptable and announce that policy in writing to all MAP Participants and on the FAS Web site. CCC has now articulated in § 1485.17(c)(8) the limited circumstances under which CCC, after prior written approval, will reimburse air travel up to the business class rate. These circumstances are the following:

(a) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(b) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(c) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (e.g., weekends, holidays, personal leave, etc.) immediately following the date of arrival. Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14 hour rule for eligibility of reimbursement of business class travel or rest period expenses. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel.

CCC believes that requiring CCC's prior written approval will allow both MAP Participants and CCC to confirm that the Participants meet the circumstances that may justify air travel in excess of the full fare economy rate.

*Comment:* One respondent stated its opposition to § 1485.17(e)(15), given that refundable airline tickets are often ''triple or more the cost of non-refundable tickets''. The respondent stated that this rule has the effect of substantially increasing overall travel costs under the program and also that the ability to claim an occasional non-refundable airline ticket and associated fees, especially for an international buyer (whose travel is both less predictable and less accountable) would be vastly exceeded by the overall higher costs for the less restrictive tickets.

The respondent also asked for clarification of ''travel restricted by a U.S. government action'' and asked if denial by U.S. officials of a visa request constituted a restriction by a U.S. Government action.

*Response:* CCC disagrees. Section 1485.17(e)(15) (now § 1485.17(d)(15)) provides that CCC will not reimburse the cost of any unused non-refundable airline tickets or associated fees, except where travel was restricted by U.S. government action or advisory. The commenter has provided no data that the effect of this proposed section would increase overall travel costs under MAP. This is not a change from the current MAP rule, and CCC does not have any reason to believe that this policy has increased costs to the MAP program beyond what it would have been had the commenter's proposal been adopted. Finally, CCC notes that denial of a visa request would not constitute a restriction by a U.S. Government action. ''Travel restricted by a U.S. government action'' would include, for example, if all travel from a country was prohibited due to an epidemic.

*Comment:* Several respondents questioned whether airline change fees are reimbursable.

*Response:* Yes. Airline change fees are reimbursable provided that such fees meet certain conditions. CCC understands that, in order to most effectively use their MAP funding, Participants at times purchase airline tickets at a price that is less than the full fare economy rate. If a Participant purchases a ticket for less than the full fare economy rate and subsequently changes the ticket, a change fee may be incurred. CCC considers this change fee to be reimbursable up to the point that the sum of the ticket purchase price and any ticket change fees equal, but do not exceed, the full fare economy rate. To clarify, if the sum of the ticket purchase price and any ticket change fees exceed

the full fare economy rate, only the full fare economy rate is reimbursable. Section 1485.17(b)(8), § 1485.17(b)(17) and § 1485.17(c)(8) have been modified to specify that program-related international air transportation, including any fees for modifying the originally purchased ticket, will be reimbursed at a rate not to exceed the full fare economy rate, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304).

*Comment:* Seventeen respondents provided similar comments in reference to § 1485.17(c)(13), which stated that more flexibility is needed for electronic communications, which are becoming a more important part of the marketing mix for Participants, both branded and generic. Fourteen of the respondents stated that the cost of service is the largest component of the costs of most devices, such as smartphones, and it is recommended that CCC include as reimbursable a monthly allowance.

They stated that as with giveaways and international travel, the determinant CCC statement may be added from time to time to allow for future flexibility. One respondent stated that it recommends that the cost of using these devices be included as reimbursable expenses and that the provisions of the regulations avoid the burdensome requirements of logging individual calls in minutes or sessions. Another commented that the regulations should provide for payment of monthly service fees for portable electronic devices for staff stationed overseas, provided the devices are primarily used for Participant market development purposes.

*Response:* Section 1485.17(c)(13) of the proposed rule provided that, for generic promotions only, CCC would reimburse the cost of the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 year, including portable electronic communications devices (including mobile phones, wireless email devices, personal digital assistants). That section does not deal with reimbursability of usage costs of electronic devices. CCC adopts § 1485.17(c)(13) as proposed (now § 1485.17(c)(12)).

As previously discussed in response to a comment, CCC believes the reimbursability of the usage costs of various communications devices is already adequately addressed by the various provisions in the MAP final rule. Reimbursability of such communication costs depends on the circumstances under which the communication took place. CCC refers to its prior response on this issue.

CCC has issued several MAP notices that provide further information on CCC's current practice of reimbursing telephone calls. MAP Notice 03–006 details CCC's allowances for program-related, emergency and personal telephone and internet expenses while on eligible travel. This Notice will remain on the FAS Web site. MAP Notice 99–009 (redundant with MAP Notice 03–006) and MAP Notice 98–017 (discussing reimbursement of wireless phone airtime devoted to program activities and now redundant) will be removed from the FAS Web site.

CCC disagrees with the commenter who requested that the regulations avoid the burdensome requirements of logging individual calls in minutes or sessions to claim reimbursement. CCC notes that all reimbursement claims must be substantiated by sufficient supporting documentation per § 1485.21(d)(6). In order to claim reimbursement for usage costs, therefore, the MAP Participant must identify the costs to be reimbursed. Thus, as CCC has noted above, the monthly service charge for a caller usage plan with unlimited minutes must be incurred primarily in furtherance of an approved activity and the Participant is responsible for documenting that such plan was used primarily in further of an approved activity. In contrast, under a caller usage plan that charges by the minute, only charges for calls incurred in furtherance of an approved activity would be reimbursed under MAP and the Participant is responsible for detailing which calls are properly reimbursed with MAP funds.

*Comment:* The respondents asked if § 1485.17(e)(16) means that CCC will reimburse for audits of subcontractors.

*Response:* No, all of the listings under § 1485.17(e) (now § 1485.17(d)) are not reimbursable.

*Comment:* One respondent stated that reimbursement for market research should be moved under subheading (b), thus allowing for reimbursement for market research under both generic and branded programs.

*Response:* CCC disagrees with the suggested comment to make market research eligible for both branded and generic programs. CCC intends that market research funded under the program be available throughout the relevant industry, not only to a single company or cooperative.

*Comment:* Four respondents provided similar comments in reference to § 1485.17(c)(20) (now § 1485.17(c)(19)), which provides that for generic promotions only, CCC will reimburse the cost of STRE (sales and trade relations expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities, including miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion). The respondents requested that CCC clarify that STRE incurred in the United States at approved activities that demonstrated a positive impact on agricultural exports, be eligible for reimbursement under MAP. One commenter asked for further clarification of STRE regulations incurred in foreign and domestic markets.

*Response:* Generally, STRE incurred outside of the United States is reimbursable. CCC, however, agrees that under certain limited circumstances, STRE may be critical to the success of an activity being carried out in the United States. Therefore, CCC has modified § 1485.17(c)(19) to clarify that STRE incurred outside the United States is reimbursable and that STRE incurred within the United States may be reimbursed under MAP upon prior written approval by CCC. As with all reimbursable expenses, such STRE must be incurred in conjunction with an approved MAP activity.

In response to the request for further clarification of STRE, CCC has codified, in part, MAP Notice 97–016 in § 1485.17(c)(19). That section now specifies that MAP Participants are required to use the American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions. MAP Participants may exceed Embassy guidelines only when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. MAP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. MAP Notice 97–016 will be removed from the FAS Web site.

*Comment:* Seven comments were received stating miscellaneous courtesies such as checkroom fees, taxi fares and tips, and decorations for special purposes should not fall under Sales and Trade Related Expenses (STRE) and should be fully covered under MAP as separate expense categories.

*Response:* Congress has given CCC discretion to operate and manage the MAP. In doing so, CCC must balance benefits to MAP Participants against limited financial resources. Under the current MAP regulations, STRE incurred outside of the United States is reimbursable for generic promotions

only. In response to other comments to the MAP proposed rule, CCC has modified § 1485.17(c)(19) to allow reimbursement of STRE incurred in conjunction with an approved generic promotion taking place within the United States upon prior written approval by CCC. CCC, however, disagrees with these commenters that miscellaneous courtesies should be considered separately from STRE.

*Comment:* One respondent commented that it did not see language that includes authorization to use program funds to cover costs associated with participation in trade shows and fairs held within the United States. The respondent stated that many are international in nature and have very strong participation from overseas, and it recommended that the rules specifically include language to allow program funds to be used for Participant staff to participate in such trade shows.

*Response:* CCC agrees with the commenter and has clarified this issue in § 1485.17(b)(7), § 1485.17(c)(8) and § 1485.17(c)(24) of this final rule. It has been CCC's practice to reimburse non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States under certain circumstances. Accordingly, CCC has codified, in relevant part, MAP Notice 09–006 in § 1485.17(b)(7)) of the MAP final rule. Section 1485.17(b)(7) now provides, in part, that, for both generic and branded promotions, non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States are reimbursable, subject to certain conditions set out in § 1485.17(b)(7). In addition, the MAP final rule expands reimbursement to other related expenses. Specifically, § 1485.17(c)(24) now provides that, for generic promotions only, domestic travel expenditures for such exhibits and shows conducted in the United States are reimbursable, subject to certain conditions and upon prior written approval by CCC. Section 1485.17(c)(8) also now specifically allows reimbursement of international travel expenses for an exhibit or show held inside the United States, subject to certain conditions. For brand promotion, neither domestic nor international travel expenses are reimbursable for retail, trade, or consumer exhibits or shows held inside the United States.

These sections allow reimbursement of eligible expenses related to exhibits and shows held inside the United States only if the exhibit or show is: (1) A food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP.

MAP Notice 09–006 will be removed from the FAS Web site. A new MAP notice will be posted on FAS' Web site listing the retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is currently allowed by CCC. In addition, MAP Notice 97–004, which addresses when brand companies are allowed to use MAP funds for expenses associated with domestic trade shows, is now inconsistent with the MAP final rule and will be removed from FAS' web site.

Below is a chart summarizing the reimbursement rules for international exhibits and shows held outside and inside the United States:

| | Exhibits and shows outside U.S. | Exhibits and shows inside U.S. |
|---|---|---|
| Generic promotion .... | Non-travel expenditures: Reimbursable (§ 1485.17(b)(7)) .... | Non-travel expenditures: Reimbursable subject to conditions (§ 1485.17(b)(7)). |
| | International travel expenditures: Reimbursable (§ 1485.17(c)(8)). | International travel expenditures: Reimbursable subject to conditions (§ 1485.17(c)(8)). |
| | | Domestic travel expenditures: Reimbursable subject to prior written approval and subject to conditions (§ 1485.17(c)(24)). |
| Brand promotion ..... | Non-travel expenditures: Reimbursable (§ 1485.17(b)(7)) .... | Non-travel expenditures: Reimbursable subject to conditions (§ 1485.17(b)(7)). |
| | International travel: Reimbursable up to 2 people (§ 1485.17(b)(8)). | International travel: Not reimbursable.<br>Domestic travel: Not reimbursable. |

*Comment:* Twenty-five respondents provided similar comments stating that the phrasing was unclear in § 1485.17(c)(24), which includes ''Expenditures associated with conducting international staff conferences.'' The respondents requested that CCC clarify whether trade shows, seminars, educational training, international staff conferences, and meetings of international organizations are all eligible for reimbursement in the United States and overseas. Several of the respondents questioned if this included international conferences taking place in the United States and if so, whether that included travel. One respondent stated that it was unclear whether the international travel costs associated with having the industry's trade representative attend the conference would be eligible.

Twenty-five respondents commented in reference to § 1485.17(c)(25) and asked for clarification of ''international organizations.'' Three respondents proposed that the language be amended to include ''and meetings of an international focus within the United States.''

One stated that this section was confusing and implied that reimbursement for travel for trade shows, seminars, and educational training was authorized only for those events that are conducted outside the United States. The respondent asked for clarification on this and stated that it believed that was not the intent of CCC, as it would severely limit the use of MAP funds to educate foreign target audiences through courses and programs conducted in the United States.

*Response:* CCC agrees that the phrasing in § 1485.17(c)(25) was unclear and has replaced it with new §§ 1485.17(c)(23)–(26).

Regarding commenters' request to clarify whether international staff conferences conducted in the United States and overseas are eligible for reimbursement, CCC observes initially that expenditures related to international staff conferences are reimbursable for generic promotions only. CCC has added a new § 1485.17(c)(23), which provides that non-travel expenditures related to conducting international staff

conferences are reimbursable, regardless of whether the conferences are held in or outside the United States. These conferences are gatherings of the international staff of the MAP Participant. CCC further notes that international travel expenditures to such conferences for MAP Participants, whether held outside the United States or in the United States, are already reimbursable in accordance with § 1485.17(c)(8). Thus, under § 1485.17(c)(8), international travel costs associated with having the industry's trade representative attend the Participant's staff conference would be eligible if the individual is an employee or overseas contractor of the MAP Participant. Thus, in sum, for generic promotions only, both international travel expenditures and non-travel expenditures for international staff conferences are reimbursable, whether the conference is held outside the United States or in the United States. Domestic travel expenditures to attend such international staff conferences are not reimbursable. For brand promotions, no expenditures of any kind associated with international staff conferences are eligible for reimbursement.

In response to commenters' request to clarify whether trade shows conducted in the United States and overseas are eligible for reimbursement, CCC has added new § 1485.17(c)(24). That section allows reimbursement, for generic promotions only, subject to § 1485.17(b)(18), of domestic travel expenditures related to international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. CCC refers to its prior response to a similar comment above regarding eligibility of domestic travel and non-travel expenditures associated with participation in exhibits and shows held outside or inside the United States.

In response to commenters' request to clarify whether seminars and educational training conducted in the United States and overseas are eligible for reimbursement, CCC has added new § 1485.17(b)(6) and new § 1485.17(c)(25). Section 1485.17(b)(6) provides that, for both generic and brand promotions, non-travel expenditures associated with seminars and educational training, whether conducted inside or outside the United States, are reimbursable. Further, for generic promotions, international travel expenditures associated with seminars and educational training conducted inside or outside the United States are already reimbursable under § 1485.17(c)(8). And, for generic promotions, new § 1485.17(c)(25) now reimburses domestic travel for seminars and educational training conducted in the United States. For brand promotions, no travel expenditures associated with seminars or educational training, whether conducted inside or outside the United States, are eligible for reimbursement. The chart below summarizes the reimbursement rules for seminars and educational training.

| | Seminars and educational training outside U.S. | Seminars and educational training inside U.S. |
|---|---|---|
| Generic promotion .... | Non-travel expenditures: Reimbursable (§ 1485.17(b)(6) ..... | Non-travel expenditures: Reimbursable subject to conditions (§ 1485.17(b)(6)). |
| | International travel expenditures: Reimbursable (§ 1485.17(c)(8)). | International travel expenditures: Reimbursable (§ 1485.17(c)(8)). |
| | | Domestic travel expenditures: Reimbursable (§ 1485.17(c)(25)). |
| Brand promotion ..... | Non-travel expenditures: Reimbursable (§ 1485.17(b)(6)) .... | Non-travel expenditures: Reimbursable (§ 1485.17(b)(6)). |
| | International travel: Not reimbursable ..... | International travel: Not reimbursable. |
| | | Domestic travel: Not reimbursable. |

CCC acknowledges the respondents' request for clarification of the term ''international organizations'' and their request to reimburse domestic travel to ''meetings of an international focus within the United States.'' Due to difficulties in defining the criteria for eligible international organizations and meetings with an international focus, CCC has decided to eliminate the provision allowing reimbursement of domestic travel expenditures for a MAP Participant's attendance at meetings of international technical organizations and declines to expand reimbursement to include ''meetings with an international focus.'' Unless such attendance falls within another covered category of reimbursement for domestic travel, domestic travel for these purposes will not be reimbursable under the MAP final rule.

Finally, as noted previously, CCC has codified MAP Notice 06–002 in new § 1485.17(c)(26). That section now allows, for generic promotion only, the reimbursement of domestic travel expenditures of a MAP Participant employee, a MAP Participant board member, or a state department of agriculture employee paid by the MAP Participant when such individual accompanies foreign trade missions or technical teams when such missions or teams are traveling in the United States. Such trade missions or technical team visits must be identified in the MAP Participant's UES and must have been approved by CCC. MAP Notice 06–002 will be removed from the FAS Web site.

*Comment:* Ten respondents commented in reference to § 1485.17(c)(31) and questioned if this included educational seminars in the United States and abroad. Three comments stated they supported the inclusion of activities that are intended to improve market access and therefore recommended the insertion of ''or other appropriate activities'' following ''educational training'' and before ''designed to improve market access.''

*Response:* CCC notes that § 1485.17(c)(31) is now rendered redundant by § 1485.17(b)(6), § 1485.17(c)(8), and § 1485.17(c)(25). Non-travel expenditures associated with seminars and educational training conducted inside or outside the United States are already reimbursable as noted above pursuant to § 1485.17(b)(6). International and domestic travel expenditures for such activities are reimbursable, for generic promotion only, pursuant to § 1485.17(c)(8) and § 1485.17(c)(25).

The intention of proposed § 1485.17(c)(31) was to specifically permit reimbursement of educational seminars, whether in the United States or abroad, where such seminars are intended to address market constraints such as temporary or permanent trade barriers. CCC, however, agrees with the comments that other activities in addition to educational training can achieve this objective. Given that, and the fact educational training is already covered in other subsections of the MAP final rule, CCC consequently has modified § 1485.17(c)(31) (now § 1485.17(c)(32)) to permit reimbursement for expenditures not otherwise prohibited from

reimbursement that are associated with an activity held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities.

*Comment:* Twenty respondents commented in reference to proposed § 1485.17(d) suggesting the sentence ''A generic promotion activity may also involve the use of specific company names, logos or brand names'' be clarified to read ''specific U.S. company names, logos, or brand names.'' The respondents stated that the absence of this clarification gives the impression that two foreign brands have to participate in activities, which would be impossible in the case of store brands. The respondents further commented on the phrase, ''At least two U.S. companies participate.'' Several of the comments stated that it was not often possible to garner two brands for participation in a generic promotion where brands are specifically identified. One respondent stated that this requirement was so onerous that it would significantly affect their ability to conduct promotions at retail.

The respondents stated that some brands may choose not to participate; so this new regulation would limit the ability of a MAP Participant to undertake a generic promotion activity. They recommended that if the MAP Participant can demonstrate that all available brands are invited to participate then the final number of promotion participants would not have an impact on the eligibility of the activity for reimbursement.

*Response:* CCC agrees with the respondents in regard to adding the clarification of ''U.S.'' to the reference to specific company names, logos, or brand names, and has modified the definition of generic promotion in § 1485.11 accordingly. CCC has also added ''U.S.'' as a qualifier for promoting separate items from multiple U.S. companies under a generic promotion. However, CCC disagrees with the respondents in regard to requiring two brands for participation and will keep this requirement in the final rule to avoid any appearance of promoting a single brand under a generic promotional activity. The text of proposed § 1485.17(d) has been moved into the definition of ''generic promotion'' in § 1485.11. § 1485.17 has been re-ordered.

*Comment:* One respondent recommended that this section be rewritten as follows: ''A generic promotion activity may include the promotion of a foreign brand if the foreign brand uses the promoted U.S. agricultural commodity. A generic promotion activity may also involve the use of specific company names, logos, or brand names. However, in that case, the MAP Participant must ensure that all U.S. and/or foreign companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the market and that at least two companies participate.''

*Response:* CCC disagrees with the respondent, and the final rule will continue to reflect that a generic promotional activity may include the promotion of a foreign brand only if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers. The text of proposed § 1485.17(d) has been moved into the definition of ''generic promotion'' in § 1485.11. § 1485.17 has been re-ordered.

*Comment:* Fifteen respondents stated in reference to § 1485.17(d) that most foreign brands are developed for the local companies to add value and be competitive in the market and are not generally designed to be the way for U.S. products to enter the market. The objective should be to encourage foreign brands to incorporate U.S. agricultural commodities, but the phrase, ''and is the primary market access to the targeted market for the U.S. agricultural commodity'' appears to limit it. The respondents questioned what exactly does the phrase itself mean, and recommended that this section be rewritten or deleted altogether.

*Response:* CCC believes that foreign brands are often very useful for increasing U.S. exports generically. Multiple foreign brands may use U.S. products, however, and a single foreign brand does not need to provide the ''primary market access to the targeted market.'' Thus, CCC agrees with the respondents and has modified the proposed text of § 1485.17(d) to remove the phrase as requested. The text of proposed § 1485.17(d) has been moved into the definition of ''generic promotion'' in § 1485.11. § 1485.17 has been re-ordered.

*Comment:* Sixteen respondents commented in reference to § 1485.17(d) that since Participants are currently allowed to promote foreign brands that are composed of U.S. commodities, this rule would place the U.S. companies at a disadvantage because Participants could promote their foreign competitors and not U.S. companies. The respondents suggested removing this language to open it up to Participants promoting U.S. company names, logos, or brand names that compete with foreign brands in their market.

*Response:* CCC believes that § 1485.17(d) in the proposed rule has been misunderstood in reference to the promotion of a foreign brand. Promoting a foreign brand constitutes a generic activity promoting the U.S. commodity because the foreign brand uses the promoted commodity from multiple U.S. suppliers. In contrast, promoting a single U.S. brand would constitute a branded activity. While § 1485.17(d) specifically states that a generic promotion activity may also involve the use of multiple specific U.S. company names, logos, or brand names, such branding must meet the conditions of § 1485.17(d), which ensures that the activity remains ''generic''. The text of proposed § 1485.17(d) has been moved into the definition of ''generic promotion'' in § 1485.11. Section 1485.17 has been re-ordered. In addition, as discussed in the response to a prior comment, CCC deleted the requirement that generic promotion activity may include the promotion of a foreign brand only if the foreign brand is the primary market access to the targeted market for the U.S. agricultural commodity.

*Comment:* In reference to § 1485.17(d) fourteen respondents provided similar comments in regard to food service promotions. Several stated that generally food service operators rely on one U.S. supplier and the U.S. product is promoted as part of the food service item, identifying the U.S. origin but not the brand. The new regulation states, ''a generic promotion activity may include the promotion of a foreign brand if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers''. The respondents stated this is not always achievable and they recommend recognizing the broad generic parameters achieved within the context of the entire activity (food service/retail/bakery, etc.) within a market.

*Response:* CCC disagrees. CCC does not consider the promotion of a foreign brand that uses only a single supplier to be generic promotion. The text of proposed § 1485.17(d) has been moved into the definition of ''generic promotion'' in § 1485.11. Section 1485.17 has been re-ordered.

*Comment:* One respondent commented in reference to § 1485.17(e)(19) (now § 1485.17(d)(19)), which provides that membership fees in clubs and social organizations are not reimbursable. The respondent asked for clarification whether fees paid to a professional industry-related

organization would be eligible for reimbursement.

*Response:* CCC intends that fees paid to a professional, industry-related organization would be eligible for reimbursement, and has added new § 1485.17(c)(33) to include such language for generic promotions only. Membership fees for clubs and social organizations remain ineligible.

*Comment:* Three respondents stated that § 1485.17(e)(26) (now § 1485.17(d)(26)) conflicts with § 1485.17(c)(23) (now § 1485.17(c)(22)) and recommended that this be amended by adding ''except as noted at § 1485.17(c)(23).''

*Response:* CCC agrees with the respondents' comment and has amended new § 1485.17(d)(26) to reference § 1485.17(c)(22).

*Comment:* Seventeen respondents commented in reference to § 1485.17(e)(27) and suggested the phrase ''negative comparison'' be removed. One respondent suggested that if CCC believed that the concept needs to be addressed then the phrase should be replaced with ''derogatory''. Another questioned whether if a product from one MAP Participant has a better functionality in an end product than that of another MAP Participant, can such statement not be made. Another respondent stated that it was unclear as to the definition of ''negative comparison'' and questioned if this regulation only refers to comparing a U.S. source of the competitive product as compared to a local source or making a generic statement that does not reference national origin. This respondent requested that this regulation be clarified to permit valid comparisons of a promoted product with that of a locally produced or generically stated product. One stated that the term ''negative'' was too general and also stated that it was not possible to discuss advantages of one of its products without suggesting something negative about some of its competitors' other products. Two respondents stated that the words ''negative comparison'' may be too restrictive a term if it prevents the forthright statement of facts and comparison of functionality and relative value of various commodities and products in a given use. Several recommended revising this section by removing the words ''negative comparison.''

*Response:* CCC agrees with the comments requesting the removal of the phrase ''negative comparison'' and with the comment asking to substitute ''derogatory'' in its place. CCC has modified § 1485.17(e)(27) (now § 1485.17(d)(27)) accordingly to prohibit reimbursement of any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities.

*Comment:* Four respondents commented on § 1485.17(e)(28), which provides that CCC will not reimburse the cost of any expenditure on an activity that contradicts U.S. foreign policy. Respondents stated that it was not clear how the exact standard of U.S. foreign policy is to be determined and what constitutes a contradiction of that policy. One stated that the regulation was too vague. Another stated that it agreed with the spirit of the regulation but were unsure how it should determine if it was contradicting U.S. foreign policy. The respondents recommended further clarification.

*Response:* CCC agrees with the respondents that the U.S. foreign policy that applies to MAP Participants is not clearly articulated in the regulation. Moreover, independent regulations and Presidential Executive Orders setting out foreign policy related to specially designated nationals and other economic trade sanctions already apply to MAP Participants independent of the MAP final rule. Accordingly, CCC has deleted § 1485.17(e)(28) from the final rule.

*Comment:* Two similar comments were made in reference to § 1485.17(f). One respondent stated that it supports the applicability of the GS–15 Step 10 salary cap as it relates to non-U.S. citizens; however, it stated in the case of contractors (U.S. citizens or non-U.S. citizens), application of this pay scale should be left to the discretion of the Participant. The respondent stated that adherence to the pay scale does not relieve Participants from having to competitively bid the position; since the Participant will have to competitively bid the position, the Participant should be allowed to pay and be reimbursed for the bid amount, which is a compensation amount that is reasonable for the market. Another respondent stated that this method of rate-setting is unfair to companies in high cost regions of the world and that it benefits those located in less expensive areas, especially third-world countries.

*Response:* § 1485.17(f) (now § 1485.17(e)) refers to employees or contractors who are hired to act as employees, rather than contractors hired to undertake a specific activity. Thus, this is not a bidding situation. CCC has modified the final rule to clarify that the type of contractor subject to § 1485.17(e) are ''contractors who are hired to act as employees.'' If a MAP Participant chooses to employ an employee or contractor at a salary rate higher than is permissible in this section, then the MAP Participant must pay for the excess in compensation itself.

*Comment:* Fourteen respondents commented in reference to § 1485.17(g) stating that since this sentence appears in the middle of the section, it is unclear as to what it applies. The respondents suggested that this be moved to the last item under the section.

*Response:* CCC confirms that § 1485.17(g) (now § 1485.17(j)) refers to all of § 1485.17. CCC agrees with the comment and has modified § 1485.17(j). That subsection now states ''CCC may determine, at CCC's discretion, whether any cost not expressly listed in § 1485.17 will be reimbursed.''

*Sec. 1485.18 Reimbursement Procedures*

*Comment:* One respondent commented in reference to § 1485.18(a)(5) that the requirement that claims for reimbursement include the applicable cost category greatly complicates the accounting process for Participants. The respondent stated that unless CCC has some practical need for cost category information, it recommended eliminating that reporting requirement.

*Response:* CCC disagrees. The requirement that claims for reimbursement include cost category is not a new requirement. Moreover, this information is necessary as CCC is often asked by Congress to report expenditures by cost category.

*Sec. 1485.19 Advances*

CCC received 45 comments in regard to advances.

*Comment:* Fifteen respondents provided similar comments in reference to § 1485.19(b). Each respondent recommended that language be included about the ability to apply for an advance in the current year if there is an outstanding advance from the previous year. The respondents stated that with the ability to apply for an advance for up to 3 months after the end of a program year this clarification is needed. They also stated that this was not spelled out in the new regulations and might be confusing to newer Participants.

*Response:* CCC does not believe it is necessary to include language about the ability to apply for an advance while there is an outstanding advance from the previous year. In the proposed rule, CCC removed the current rule's requirement that no advance will be made if an advance from a previous program year is still open. Thus, CCC believes § 1485.19(b) of the proposed rule, which does not contain any

prohibitions on a MAP Participant's request for an advance (except to require that such Participant meet the criteria for advance payments set forth in the applicable parts of this title, e.g., parts 3015, 3016, 3019), as written, allows Participants to apply for an advance in the current year if there is an outstanding advance from the previous year. In addition, CCC notes that the proposed rule already makes clear that a Participant may apply for an advance for up to 3 months after the end of its program year. The proposed rule provides, in part, that ''CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP Participant's program year.''

*Comment:* Four respondents commented regarding security in reference to § 1485.19(b). Two of the respondents requested clarification as to what circumstances would require submission of security and what type of security would be expected. One commented that the regulation was very vague and stated that they felt that a Participant capable of ''fronting security'' may not need an advance.

*Response:* Section 1485.19(b) provides, *in part,* that ''[i]f CCC approves the request, prior to making an advance, CCC may require the MAP Participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests.'' USDA's uniform federal assistance regulations, in 7 CFR § 3015.17(a), already provide that ''[i]f the recipient is not a unit of government, the awarding agency may require the recipient to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creat[ing] an unacceptable risk.'' Similarly, USDA's uniform administrative requirements for grants and agreements with nonprofit organizations, in 7 CFR § 3019.21(d), provide that ''[t]he Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.'' The proposed MAP rule explicitly observed that 7 CFR parts 3105 and 3109 apply to the MAP and MAP Participants (to the extent that they do not directly conflict with the MAP final rule). Thus, to the extent that CCC needs to take precautions to protect the federal government's interests, USDA's uniform regulations already provide a way for CCC to do so.

To accommodate the respondents' request to clarify what circumstances would require submission of security and what type of security would be expected, CCC has decided to delete the sentence from § 1485.19(b) quoted above and to add to the end of § 1485.19(b) the following: ''When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the MAP. Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in MAP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.'' Thus, CCC will make a determination, based on the applicable facts and circumstances presented by a particular MAP Participant's advance request, whether the MAP Participant must obtain fidelity bond coverage and in what amount.

*Comment:* Twenty-five respondents made similar comments in reference to § 1485.19(c). Fifteen stated that the requirement for a quarterly financial statement to CCC for all funds advanced and all interest earned is onerous. These respondents further stated that an annual statement should suffice. Six of the comments received recommended a waiver of interest for smaller advances. Four of the respondents stated that Participants are expected to pay all expenses in advance of reimbursement and that the financing of these costs are significant and dramatically exceed any potential revenue generated by interest income therefore they specifically oppose this rule.

*Response:* CCC agrees that requiring a quarterly statement on advances is unnecessary, given the fact that such information should be readily available in the UES system. Accordingly, CCC has deleted the last sentence from § 1485.19(c) requiring the submission of a financial statement.

*Sec. 1485.20 Employment Practices*

CCC received 20 comments in regard to this section.

*Comment:* Twenty respondents commented in reference to § 1485.20(a), which requires that MAP Participants enter into written contracts with all employees and that all terms, conditions, and related formalities of such contracts conform to governing local law. The respondents stated that this rule was onerous and counterproductive, and that they opposed this rule.

*Response:* CCC disagrees that this rule is counterproductive or onerous. CCC is aware of several cases of MAP Participants being involved in lawsuits involving the Participant's overseas employees. The written employment contract protects Participants' and CCC's interests. Furthermore, in order to properly perform its compliance and monitoring functions, CCC requires documentation to support all MAP expenditures. The written employment contract provides such documentation for overseas employees.

*Comment:* Fourteen respondents asked if the intent was to require employment contracts with MAP Participant employees in foreign locations and suggested CCC restate this to be clear. Two questioned if this was intended for foreign staff only and stated that contracts would limit both the flexibility of the employer as well as employee and provide a much more difficult environment in cases of unsatisfactory performance by an employee. They also stated that it could lead to substantially higher costs for Participants. One commented that all of the 50 states are ''at-will employment states'' and that this doctrine covers employment practices for MAP Participants with domestic U.S. staff. Two respondents commented that written contracts should only be required by CCC in reference to employees paid for with MAP funds.

*Response:* CCC intends that this section refers to the employment of overseas employees who are paid in whole or in part with MAP funds and has modified this section accordingly to require ''written contracts with all overseas employees who are paid in whole or in part with MAP funds.'' CCC disagrees with the comment that contracts would limit the employer's and employee's flexibility and make it more difficult to let go of an unsatisfactory employee. A written employment contract would not eliminate the ability of employers to fire employees at will if the contract includes an at-will clause. Similarly, an employment contract can be written to reflect the flexibility desired by the parties to the contract.

*Sec. 1485.21 Financial Management*

CCC received 18 comments in regard to this section.

*Comment:* Sixteen respondents provided comments in regard to § 1485.21(c). Fourteen of the respondents stated that the record retention policy is modified to delete the 5-year requirement without specifying the required retention period. They stated that they assumed it was included in 7 CFR part 1, subpart A—Official Records, but questioned the

point of referencing this part when the required retention time could be stated here.

One respondent commented that there were several references in this section and others to ''applicable parts of this title'' and stated that was very vague. They asked CCC to clarify the reference more precisely. Another respondent stated they believed § 1485.21(c) pertained to employment records for non-U.S.-based employees and asked that the regulation be restated to clarify this.

*Response:* CCC agrees with the respondents' recommendation of an explicit statement of the required retention time. 7 U.S.C. § 5662 requires, in part, that MAP Participants maintain all records concerning a program transaction for a period not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records. CCC has modified § 1485.21(c) accordingly to require retention of all records concerning a MAP program transaction for a period of 5 years after completion of the program transaction, and to permit CCC to have full and complete access, for such 5-year period, to such records. Additionally, in response to the comment questioning whether employment records had to be retained only for non-U.S.-based employees, CCC has modified § 1485.21(c) to explicitly state that records shall include all documents related to employment of any employees whose salaries are reimbursed in whole or in part with MAP funds, whether such employees are based in the United States or overseas.

In response to the comments that refer to ''applicable parts of this title'' in the MAP final rule are vague, CCC refers to its prior response to a similar comment.

*Comment:* One respondent referenced § 1485.21(d)(6) and asked for clarification of the term ''receipted paid bills.'' They stated in the past ''stamped'' paid bills were not considered an acceptable form of proof of payment and that instead there had to be evidence of a financial transaction which involved a third party such as a bank.

*Response:* Receipted paid bills means bills for which receipt of payment has been confirmed in writing by the payee. This language has not been changed from the current regulation. CCC has not changed its past practice. CCC believes this term is well understood and does not believe it is necessary to codify any clarification.

*Comment:* One respondent commented on § 1485.21(d)(7), which requires MAP Participants to maintain documentation supporting contributions. Such documentation must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. The respondent stated that although the required documentation referenced in this section was relatively easy for a MAP Participant to provide, it was unreasonable to expect this level of detail in reports from the U.S. industry.

*Response:* CCC disagrees. In order to properly perform its compliance and monitoring functions, CCC requires documentation to support all MAP contributions. If U.S. industry expenditures cannot be supported by adequate documentation, such expenditures will not count as eligible contributions. This language has not been changed from the current regulation.

*Sec. 1485.22 Reports*

CCC received four comments in regard to § 1485.22. One comment supported the proposed rule. CCC's responses to these comments are below. In addition, CCC has modified § 1485.22(e) to clarify that CCC can require a MAP Participant to submit an A–133 audit only when CCC is designated the cognizant agency for audit.

*Comment:* One respondent commented on § 1485.22(a), stating that the format currently used to report contributions requires identification of amounts by cost category and source, not by activity code. The respondent stated that to track expenditures by activities would be burdensome, and it recommended that CCC retain the current format for reporting contributions.

*Response:* CCC agrees with the respondent and has modified the section accordingly to delete the requirement to identify contributions by activity.

*Comment:* Two respondents commented in reference to § 1485.22(b), stating that in many cases, documentation of travel and travel expenses were not received by the Participant until well beyond the proposed 45 day period after travel. The respondents proposed that the reference to ''completion of travel'' be replaced with ''submission of claims for travel expenses.''

*Response:* CCC disagrees with the respondent. Travel expense information is not required in trip reports. Moreover, this provision has been in place for at least 15 years, and reporting has become easier with the improvement in electronic technologies.

*Sec. 1485.23 Evaluation*

In reference to § 1485.23(b), CCC received six comments supporting the change in requirements for submission of the evaluation report from 3 months to 6 months. They stated this change will result in an improved ability to more accurately report the results of their activities.

*Sec. 1485.24 Compliance Reviews and Notices*

CCC received 107 substantive comments in reference to § 1485.24. CCC has also deleted the reference to ''a notice of delinquency'' from § 1485.24(e)(2). Pursuant to 7 CFR part 1403, when a debt is due CCC, only an initial written demand for payment is provided to the debtor.

*Comment:* Fifteen respondents recommended that CCC develop and publish a realistic timeline for MAP Participants to come into compliance with the new regulations after the effective date. The respondents stated that compliance with the contracting guidelines and anti-fraud requirements requires a reasonable length of time.

*Response:* CCC has delayed the effective date of the final rule until the MAP Participant's 2013 program year (i.e., either 01/01/2013 or 07/01/2013). MAP Participants may, however, voluntarily choose to comply with § 1485.15(a)–(b), § 1485.29(d) and § 1485.31(a)(1) of the final rule in their 2012 program year.

In subsequent program years after 2013, a new MAP Participant, including a former Participant that did not participate in the previous program year, will be required to submit its initial brand program operational procedures (as applicable), contracting guidelines and anti-fraud program as set forth in its approval letter. Returning MAP Participants will be required to submit their brand program operational procedures (as applicable) and anti-fraud program, as set forth in their approval letters.

*Comment:* Twenty-two respondents stated their concern in reference to § 1485.24(d). The respondents stated that they were concerned that the proposed rule states ''the fact that a compliance review has been conducted by USDA staff does not signify that a MAP Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations.''

*Response:* This language is included to signify that a compliance review may not identify all occasions in which a Participant is out of compliance. The fact that a compliance review had occurred and did not uncover the non-compliant action is not a defense to any subsequent determination by CCC that the Participant is not in compliance with its program agreement, approval letter and/or applicable laws and regulations. Similarly, a future compliance review may include findings that were not identified in a previous review, although similar non-compliant actions may have occurred during the time period covered by the previous review.

*Comment:* Fifteen respondents questioned how a Participant can be assured that it is in compliance with the MAP program if a compliance review cannot be used as a basis for establishing program compliance. Another respondent commented that § 1485.24(d) seems to imply that a compliance review means only that the auditor has not found anything—yet. One respondent stated that when a Participant has acted in good faith, the determination long after the fact that a given practice was in error should not cause CCC to re-open previously audited expenditures for reimbursement to CCC. Several of the respondents stated that a successful review should be considered confirmation that a Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations. They questioned what value a compliance review has if it doesn't attest to a Participant's compliance.

Two respondents commented that the problems with this language are further compounded by the current rarity of reviews and the extended length of time it takes to receive the official concluding letter. Fourteen comments stated that the compliance staff should develop an approach that would be sufficient to cover all areas of the program and give all Participants (MAP Participants and USDA staff) a sense of confidence that a thorough review has been achieved.

*Response:* CCC disagrees. When requesting and accepting MAP funding, MAP Participants become responsible for the effective control over all funds, property, and other assets they receive from the federal government. MAP Participants must act accordingly and institute their own internal controls for safeguarding these funds.

CCC has a similar duty to ensure public funds are properly expended. Compliance reviews are one way in which CCC discharges, in part, this duty. The purpose of such reviews is to give assurance to CCC, not MAP Participants. These reviews are not comprehensive evaluations for Participants regarding their own internal controls and systems. Moreover, even the most stringent review would not necessarily bring about CCC's complete confidence that a Participant's program did not include any non-compliant actions. As an example, fraudulent behavior by a MAP Participant's contractor may initially appear to be completely compliant upon review of well-crafted fraudulent documentation. A subsequent whistleblower complaint, however, may reveal the fraudulent activity. It is simply not possible for CCC to confirm that an entire program is in compliance for any MAP Participant, much less for all MAP Participants.

In short, whether or not CCC's compliance staff conducts a compliance review of a MAP Participant's program and regardless of the outcome of that review, the Participant retains the ultimate responsibility, as a result of having accepted federal funds, for running its program in compliance with all applicable laws and regulations.

*Comment:* Fourteen respondents proposed that additional language be added to this section, stating, ''Should USDA staff determine that a MAP Participant is out of compliance, the MAP Participant will be required as in (b) and (c) of this subpart to return to CCC the amount of funding deemed to have been inappropriately spent for the reviewed program year. Notice will be made of the particular error and shared with all MAP Participants. A pattern of this error may be noted but the MAP Participant will only be required to reimburse CCC for the compliance finding resulting from the current review and at the time the finding was made and going forward and not liable for previously un-reviewed and undiscovered findings.''

*Response:* CCC disagrees with this comment. CCC does not agree that all compliance findings are appropriate to share with other MAP Participants. While compliance findings often are the results of errors or misunderstandings, occasionally compliance findings involve intentional actions taken to violate the regulations. Such actions are often covered up by the perpetrator, and are sometimes not discovered through normal compliance reviews. CCC will continue its current practice of providing notice to MAP Participants of patterns of errors or misunderstandings that it has discovered through compliance reviews and that it deems appropriate to share with all MAP Participants. Also, as noted in previous responses, CCC disagrees that MAP Participants should not be liable for previously undiscovered instances of noncompliance.

*Comment:* Nineteen respondents commented in reference to § 1485.24(e)(1) stating that the reduction in the amount of time for a Participant to respond to an audit finding from 60 to 30 days was an unreasonably short period of time, an unwarranted reduction and an onerous requirement. Several stated that staff members are not always in-country to begin working on a response immediately and that 30 days does not provide sufficient time for the Participant to research and develop an adequate response or appeal.

*Response:* CCC concurs with the commenters that the reduction in time to respond may create an onerous requirement as Participants are often in travel status. Therefore, CCC has changed § 1485.24(e)(1)'s period of time within which a MAP Participant may submit a response to a compliance report or written notice back to 60 days. In addition, CCC has made a corresponding change to § 1485.24(b) and (c), whereby if a MAP Participant notifies CCC within 30 days of the date of the written compliance report or written notice that the Participant intends to file an appeal pursuant to § 1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are finished and CCC has made a final determination as to the amount owed.

*Sec. 1485.25 Failure To Make Required Contribution*

CCC received 17 comments in reference to § 1485.25.

*Comment:* Sixteen respondents stated that they believed that the time to remit payment for failure to make required contributions should be 6 months after the program year ends, not 90 days. Two respondents proposed the contributions should be within 6 months in order to be consistent with the proposed rule at § 1485.23(b), which states that evaluation results be submitted within 6 months following the end of the Participant's program year. They stated the evaluation process is an essential component in determining a MAP Participant's contribution level and therefore proposed that § 1485.25 be amended to read, ''a MAP Participant shall remit such payment within 6 months after the end of the program year.''

*Response:* CCC agrees that the time to remit payment should be 6 months, because the MAP Participant has 6 months to develop its contribution report and may not realize it has fallen

short in contributions until the report is complete. Section 1485.25 has been modified accordingly.

*Sec. 1485.28 Ethical Conduct*

CCC received 21 comments in reference to § 1485.28.

*Comment:* One respondent commented on § 1485.28(b), which states that ''A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant.'' The commenter also refers to § 1485.28(c), which states, in part, that ''A MAP Participant shall not limit participation in its MAP activities to members of its organization.'' The respondent stated the two sections appear to be contradictory and further questioned how a MAP Participant recruits members, if all companies must have equal access to programs and information regardless of their membership in the Participant organization. This respondent stated that additionally, as the companies that are members are contributing financial resources to satisfy the MAP's contribution requirements, it is only fair that these companies derive some benefit over companies that are non-members.

Nineteen respondents commented in reference to § 1485.28(c) stating that they would like to know what method a MAP Participant is to use to incentivize membership (thus achieving the broadest base) if no preference is permitted as a benefit of membership. They stated that, while not excluding anyone from participating, it is possible to give some limited preference, such as first notice of events, etc. Three of the respondents stated that § 1485.28(c) would require non-members to participate in their marketing program using their brand. These commentators state that a farmer-owned agricultural cooperative cannot permit non-members to participate in the cooperative's marketing program using the cooperative's brand. The respondents believed this proposed rule was in direct contradiction with these statutory requirements.

One respondent suggested the regulation should state that all commercial entities must have equal opportunity to access program information funded by MAP, but that such opportunity is provided only through membership in a Participant organization.

*Response:* Section 1485.28(b) and § 1485.28(c) are not contradictory. Under § 1485.28(b), a MAP Participant may collect check-off funds and membership fees that are required for membership in the MAP Participant. Section 1485.28(c) prohibits a MAP Participant from limiting participation in its MAP activities to members of its organization. The MAP final rule does not require equal access to the MAP Participant's non-MAP-funded programs and information. To make clearer that the requirement of open participation is limited to MAP activities, CCC is modifying § 1485.28(c) to require that Participants agree to ensure that their MAP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors.

It is CCC's intention that the benefits of the MAP should be made broadly available throughout the relevant agricultural sector. Not all MAP Participants are similarly structured, and some organizations are far more inclusive than others. Because CCC cannot, and would not desire to, instruct industry groups how to organize themselves, this requirement is placed on those organizations that choose to participate in the MAP. Participating organizations are free to charge reasonable and documentable administrative fees to non-members that participate in MAP-funded activities.

CCC notes that § 1485.28(c) is not intended to require MAP agricultural cooperatives to allow non-members to participate in their marketing program using the cooperative's brands. In response to this comment and the following comment, CCC has modified § 1485.28(c) accordingly to explicitly provide that this provision does not apply to U.S. agricultural cooperatives when implementing their own brand program.

*Comment:* One respondent asked that FAS clarify that § 1485.28(c) and § 1485.28(d) would not apply to nonprofit U.S. agricultural cooperatives with their own brand program. If FAS determines otherwise with respect to the document disclosure provision § 1485.28(c), the respondent asked that the provision be made clear that it allows for the redaction of business-confidential information from any documents provided pursuant to the provision.

*Response:* As noted above, CCC has modified § 1485.28(c) in response to a prior comment so that the provision does not apply to agricultural cooperatives promoting their own brand program. Furthermore, § 1485.28(d) does not deal with brand promotion, but speaks only to how MAP Participants select industry representatives to participate in generic MAP activities. CCC has also modified § 1485.28(d) to clarify that the provision applies only to generic activities.

*Sec. 1485.29 Contracting Procedures*

CCC received 69 comments in reference to § 1485.29. Responses are set forth below.

*Comment:* Three respondents provided similar comments in reference to § 1485.29(b). One comment asked if this section applies to items paid with MAP funds and income generated from programs or only the former. Two questioned if the ''small purchase threshold referenced in 7 CFR part 3019 is set at $100,000, to whom do the contracting plan requirements apply for contracts above $25,000?'' One respondent questioned what contracting compliance procedures were affected by this dollar threshold.

*Response:* CCC intends that any use of income generated by MAP funded activities should be governed by the MAP regulation. CCC has modified § 1485.32 accordingly to state that the Participant's use of such revenue or refunds generated from MAP-funded programs shall be governed by 7 CFR Part 1485. Thus, § 1485.29 would apply to items paid, in whole or in part, with income generated from MAP programs.

Regarding the questions related to the $100,000 small purchase threshold and the $25,000 contract requirement, CCC notes these are two different thresholds that relate to two different provisions in the MAP final rule. In addition, CCC notes that it has increased the $25,000 threshold to $35,000 in the MAP final rule as discussed below in response to a different comment.

Proposed § 1485.29(d) of the MAP final rule created a new requirement for MAP Participants to submit a contracting plan that lists each contract with an annual value of $25,000 or more. In the MAP final rule, CCC changed § 1485.29(d) to require that ''[e]ach MAP Participant shall submit to CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with MAP funds. CCC's approval of such contracting guidelines will remain in place until CCC retracts its approval in writing or new guidelines are approved that supersede them. Once approved by CCC, these contracting guidelines shall govern all of a Participant's MAP-funded contracting involving contracts with an annual value of $35,000 or more.'' Thus, all MAP Participants must establish written contracting guidelines for contracts that are funded in whole or in part by MAP funds and that have an annual value of $35,000 or more. CCC also modified § 1485.29(c) and (d) to

make clear that these provisions apply only to MAP-funded contracts.

In addition to this requirement for written contracting guidelines, § 1485.29(b) also provides that ''[a] MAP Participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements (e.g., 7 CFR Parts 3015, 3016, and 3019). For purposes of this subpart, the ''small purchase threshold'' referenced in 7 CFR part 3019 is the ''simplified acquisition threshold'' established by 41 U.S.C. § 134.'' Thus, the small purchase threshold of $100,000 referenced in § 1485.29(b) relates to those procurement standards set out in part 3019 of this title, which sets out the uniform administrative requirements for nonprofit organizations.

To illustrate, both 7 CFR part 3019 and 7 CFR part 3016 contain procurement requirements, some of which are tied to the ''simplified acquisition threshold'' (previously ''the small purchase threshold'') previously set out at 41 U.S.C. § 403(11), now codified at 41 U.S.C. § 134. *See, e.g.*, 7 CFR § 3019.44(e), 7 CFR § 3016.36(d). This threshold was, at one time, $25,000. It was subsequently increased to $100,000 by statute. Because the current 7 CFR part 3019 has not been updated to reflect the increase in that threshold from $25,000 to $100,000 as set forth in 41 U.S.C. § 403(11), now codified at 41 U.S.C. § 134, CCC clarified the current $100,000 threshold in proposed § 1485.29(b). In response to these comments, however, CCC believes that, to account for possible changes to the simplified acquisition threshold that may occur in the future, it would be best if the final rule referred to the statute fixing the threshold rather than specify the currently applicable threshold. Accordingly, CCC has modified § 1485.29(b) to refer to the threshold set at 41 U.S.C. § 134 rather than a $100,000 threshold.

*Comment:* Thirty-one respondents stated that if the requirement to submit contracting ''plans'' is retained, they proposed an increase to the annual contract value greater than the current $25,000. A suggestion was made for $100,000. Four comments stated that the total cost is often not known until the bidding is completed. They stated that this regulation was too intrusive and would lead to multiple re-submittals of the contracting plan to account for new and revised contracts. They stated that this policy should not require a listing up-front of all contracts expected during that plan year.

*Comment:* CCC received thirty-one similar comments in reference to § 1485.29(d). All respondents opposed the regulation as written. Fifteen respondents stated that they believed these contracting requirements should apply only to those contracts that are fully funded and reimbursable by MAP and not those that will be paid for with industry funds (contributions). Several respondents stated that the proposed rule was too onerous and that, at most, MAP Participants should be required to provide a description of contracting guidelines, not procedures that could be applied to different contracting situations.

*Comment:* Eighteen respondents provided comments that ''contracting guidelines'' should be substituted for ''contracting plan'' and that once a plan (guideline) is approved in any given year, it should not need to be reapproved, unless it changes in some fundamental way.

*Comment:* Seventeen respondents stated their strong opposition to the proposed rule and stated that the rule presented a number of challenges, including that the decision to use a contractor may not be made until the award letter is received and individual projects are approved. They stated that the timing of the award cycle would make this proposed requirement impossible and create an onerous pre-approval process that not only micromanages program implementation but would be impossible under the timelines by which the program currently operates.

*Comment:* One respondent proposed a change in the wording in the following passage to read, ''Prior to entering into any contracts during a program year, a MAP Participant must submit to CCC for CCC approval a written contracting (procedure manual).'' The commenter then asked when the MAP Participant could anticipate receiving approval of their contracting procedure manual. Another proposed that at most FAS require that the Participant develop a description of contracting procedures that could be applied to different contracting situations and would remain applicable over multiple years.

*Comment:* Fourteen respondents questioned on what basis anyone at CCC would be qualified to judge a Participant's contracting plan. They stated conversely, if the judgment was only related to whether there was a plan or whether it was adequately updated, then what was the point? They stated that this set of requirements created the need for a parallel notification process as Participants will be forced to amend the plan with each new need.

*Comment:* Fifteen respondents commented in reference to § 1485.29(d)(1) stating that much of this section was covered by inference in § 1485.28; so it should not need to be spelled out here.

*Comment:* Three respondents stated they supported the regulation for requiring an annual documented evaluation for in-country representation in lieu of the current arbitrary process of rebidding every 3 years.

*Response:* The proposed rule established a requirement for a contracting plan in § 1485.29(d) because CCC has received many questions about appropriate contracting procedures over recent years. The proposal was not meant to be an onerous requirement. Rather, it was meant to encourage MAP Participants to formalize their contracting methods and intentions for a given year and to give MAP Participants the opportunity to obtain in advance CCC review and pre-approval of the Participants' contracting methods.

CCC understands that the bulk of the opposition to this proposal stems from the requirement to list all contracts. CCC agrees that this is unnecessary and actually detracts from the intended purpose. CCC has accordingly modified § 1485.29(d) to require that MAP Participants establish contracting guidelines to follow as various contracting situations arise. Individual contracts need not be identified. Moreover, CCC has removed the requirement that a MAP Participant must submit its contracting plan to CCC prior to entering into any contracts during the program year. Rather, the MAP final rule now provides that after CCC approves the initial contracting guidelines, such approval will remain in place until CCC retracts its approval in writing or new guidelines are approved that supersede them. As discussed above in response to a separate comment, MAP Participants shall submit their contracting guidelines to CCC as set forth in their approval letters. The MAP final rule continues to allow the MAP Participant to modify and resubmit these guidelines for reapproval at any time.

CCC agrees that these contracting requirements should apply only to those contracts that are funded, in whole or in part, by MAP funds and not those that are paid for with industry funds (contributions). CCC has modified § 1485.29(d) accordingly. CCC observes that this would encompass all contracts funded in whole or in part with MAP funds, which would include contracts with U.S.-based organizations that are retained to implement or assist with approved international market

development efforts, if such contracts were funded by MAP.

CCC does not agree with the suggestions to increase the threshold of $25,000 to $100,000 for contracts that are to be submitted in contracting ''plans.'' First, CCC notes that the requirement no longer requests contracts to be listed. Second, CCC observes that CCC chose the $25,000 level in the proposed rule because that is the same threshold that CCC has maintained since 1996, as reflected in MAP Notice 05–005, for the contract competition requirement. Since 1996, CCC has required MAP Participants to conduct an appropriate form of competition at least every three years on all contracts valued at $25,000. CCC believes that the $25,000 level is an appropriate level not only for when competition should be conducted but also for determining what contracts should be subject to written contracting guidelines. However, in recognition that the $25,000 level should be adjusted for inflation, using the Department of Labor's Bureau of Labor Statistics inflation calculator, CCC has increased the minimum level to $35,000, with the possibility of future increases through written guidance announced to MAP Participants via a MAP notice issued on FAS' Web site. Section 1485.29(d) has been modified accordingly. CCC notes that MAP Notice 99–003 is now obsolete and will be removed from FAS' Web site.

CCC disagrees that the substance of § 1485.29(d)(1) can already be inferred from § 1485.28 and need not be spelled out in § 1485.29(d)(1).

In response to the comment asking when the MAP Participant should expect approval of its contracting procedures, CCC will try to complete its review of contracting guidelines within 21 calendar days of receipt.

*Comment:* A respondent suggested that if an activity is approved in a particular city that MAP Participants be required to at least offer qualified contractors in that city or country an opportunity to bid on the project. The commenter further stated that contractor lists should be obtained from the local post rather than requiring potential contractors to register on a Web site. In addition, the commentator stated that the post should review the activity before it begins.

*Response:* While CCC requires open, fair, and competitive contracting practices, CCC cannot and does not deem it appropriate to instruct MAP Participants in appropriate methods for identifying potential contractors in every market in the world. In addition, some FAS Posts could not review every activity in their markets.

*Comment:* Two respondents provided similar comments in reference to § 1485.29(d)(3) and stated that they understood the rationale for this proposal was ensuring that contracting procedures were open, fair and competitive. They stated that there are exceptions, especially in the area of highly technical services where there is reasonable cause to allow the same individual to draft specifications as to bid on them. The respondents proposed that such circumstances be treated as a rare exception and as one of the ''various situations'' for which ''separate procedures'' are developed as cited in § 1485.29(d)(2), to ensure that such exceptional cases result in an open, fair, and competitive contract.

*Response:* In response to the commenters' requests, CCC has modified § 1485.29(d)(3) to provide that MAP Participants' written contracting guidelines may detail special situations where the prohibitions in this subsection do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market. As discussed above, CCC must approve or disapprove of MAP Participants' contracting guidelines.

Respondents question whether § 1485.29(d)(2) authorizes MAP Participants to develop separate procedures that would allow the same individual to draft specifications to bid on the solicitation. Section 1485.29(d)(2) does not directly address this issue. Consequently, as discussed above, CCC has modified § 1485.29(d)(3) instead.

*Comment:* Six respondents stated that this section does not discuss requirements for contracts of less than $25,000 (now $35,000).

*Response:* While the contracting guidelines required by § 1485.29(d) apply only to contracts with an annual value of $35,000 or more, contracts with an annual value of less than that threshold are still subject to the remaining provisions of the MAP regulations, including § 1485.29(a)–(c), as well as other procurement provisions of the applicable parts of this Title. For example, § 1485.29(c) indicates that all contracting should be fair, open, and competitive.

*Sec. 1485.31 Anti-Fraud Requirements*

CCC received 85 comments in reference to this section.

*Comment:* Twenty-one respondents provided similar comments in reference to § 1485.31(a)(1), stating that the regulation as written was too intrusive and onerous. Several of the respondents recommended either removing this regulation altogether and/or treating it like Civil Rights training by developing course work based on what was developed for the anti-fraud course offered by Western U.S. Agricultural Trade Association. The respondents stated that FAS could then require all MAP Participant staff and board with fiduciary responsibilities to take the course and submit certification statements to that effect.

*Response:* CCC disagrees. CCC's position is that anti-fraud efforts should be more structured and intensive than in the past. Recent incidents indicate fraud has the potential to cause considerable losses to the government. In addition to the requirement that they develop a fraud prevention program, MAP Participants are highly encouraged to attend anti-fraud training courses.

*Comment:* Seventeen respondents stated that if necessary, this plan should be developed once, submitted and approved and only be resubmitted if there has been some fundamental change. As with the contracting subpart, they questioned what the timing was for submission of the MAP Participant's fraud prevention program and when the MAP Participant should expect the program's approval.

Three respondents asked for clarification on when the information needs to be submitted and if the review was to be done by an independent third party or if it could be done in house. Two respondents provided comments proposing that the annual submission take place outside of the annual UES application process or that it be completed as part of the regular compliance review process.

*Response:* CCC disagrees that plans should only be re-submitted if there are fundamental changes to the plan. While an initial plan would not need to be rewritten every year, CCC expects MAP Participants to review their anti-fraud plans annually and to submit these plans each year, regardless of whether they have fundamentally changed. CCC has modified § 1485.31(a)(1) to make clear that MAP Participants should review their fraud prevention programs annually. While a plan may not change dramatically from one year to the next, CCC expects that annual reviews would yield the need for minor changes from time to time and expects to review the current applicable plan for each program year. It is not necessary that the plan be developed by an independent third party if the MAP Participant has internal expertise.

As stated above in response to an earlier comment, it is expected that a 2013 MAP Participant should submit its initial anti-fraud program as directed in its approval letter. Thus, annual submission will take place outside of the UES application process. In subsequent program years, a new Participant, including a former Participant that did not participate in the previous program year, will be required to submit its initial anti-fraud program as set forth in its approval letter. For continuing annual submissions, MAP Participants will submit their plans as directed in their approval letters. CCC does not agree that the anti-fraud submission should be completed as part of the regular compliance review process. First, as noted above in response to a similar request related to operational brand procedures, the purpose of the CCC review is to approve a plan at the start of a program year, before the program begins operation. Compliance reviews look at what has historically happened. Moreover, during the compliance review, CCC may review the implementation of the plan, rather than the plan itself.

In response to the comment asking when the MAP Participant should expect approval of its program, CCC will endeavor to complete its review within 21 calendar days of receipt.

*Comment:* Sixteen respondents questioned if a MAP Participant has multiple locations with accounting responsibilities, does the annual review have to include all locations or just the corporate headquarters where the financial consolidation occurs?

*Response:* Because fraud can occur both at corporate headquarters and field offices, CCC expects anti-fraud reviews to encompass all of a Participant's offices.

*Comment:* One respondent commented that this section appears to apply to exclude brand participants. The respondent stated that the current fraud prevention program covered by A–133 covers this requirement, and therefore it asserted that this regulation was redundant and recommended that this regulation be eliminated or A–133 should be eliminated.

*Response:* The anti-fraud requirements are imposed on MAP Participants, not brand participants that participate in the MAP program through MAP Participants. CCC disagrees that § 1485.31's requirements are redundant with OMB Circular A–133. OMB Circular A–133 requires, in part, that subject entities (those who expend $500,000 or more in federal awards) have an audit conducted. Such entities must maintain appropriate internal controls. In contrast, the MAP final rule applies to all MAP Participants (not just those who expend $500,000 or more) and requires a specific proactive and preemptive fraud prevention program. One of the objectives of the fraud prevention requirement is to make MAP Participants more aware of the specific risk for brand participants to defraud them. The MAP requirements are in addition to, not in lieu of, the requirements of OMB Circular A–133.

*Comment:* Two respondents questioned if the cost of fraud prevention review would be reimbursable.

*Response:* CCC does not intend for anti-fraud efforts to be reimbursable with MAP funds. CCC has added § 1485.17(d)(31) to clarify this.

*Comment:* One respondent stated that it (the Participant) has adhered to an internal controls document which includes language on fraudulent behavior. It stated that it would like clarification of the new anti-fraud preparation policies to ensure that its policies adhere to MAP regulations.

*Response:* While CCC may provide anti-fraud training and guidance in the future, given the differences in structure between classes of MAP Participants, as well as differences between individual MAP Participants, CCC does not believe CCC should dictate a single set of anti-fraud procedures or a model anti-fraud plan for all MAP Participants to use. The respondent may submit its internal controls document to CCC by the time stated in its approval letter or any time before that, at which time CCC will review this document and respond.

*Comment:* One respondent commented that it did not feel that each Participant should be responsible for developing its own anti-fraud program and that this would result in the application of different security standards. This respondent stated it would be more efficient and more economical if CCC, with the assistance of an outside contractor, could develop a set of minimum anti-fraud procedures for all Participants to use.

*Response:* While CCC may provide anti-fraud training and guidance in the future, given the differences in structure between classes of MAP Participants, as well as differences between individual MAP Participants, CCC does not believe CCC should dictate a single set of anti-fraud procedures or a model anti-fraud plan for all MAP Participants to use.

*Comment:* Three respondents provided similar comments in reference to § 1485.31(a)(2). All three suggested that the language be modified to read, ''notify CCC promptly when any instances of fraud have been substantially determined.''

*Response:* CCC disagrees with the respondents and believes CCC should be a part of any investigation early enough to determine if fraud has occurred.

*Sec. 1485.32 Program Income*

CCC received six comments in regard to this issue.

*Comment:* One respondent stated that as an organization that conducts activities spanning more than one program year, it felt there were several challenges with this language. It stated that it does not see a way to comply strictly with the proposed language and further stated that it recommended that Participants be allowed to create a program reserve (at an agreed upon level) from participation fees, with the understanding that any funds above that level be remitted to CCC as they occur and that the reserve fund itself remit to CCC if/when the Participant terminates participation in the MAP program.

*Comment:* Four respondents stated they strongly support the proposed revision.

*Response:* Proposed § 1485.32 allowed the MAP Participant to expend program income in furtherance of the MAP Participant's approved MAP activities in the program year in which the program income was received. CCC, however, acknowledges that a MAP Participant's program can be funded over a multi-year basis. Therefore, given that the grant period may be multi-year and certain activities may occur over more than one calendar year, CCC has accordingly modified § 1485.32 to allow MAP Participants to use program income in furtherance of approved MAP activities during the program period over which the MAP Participant may expend the MAP funds, regardless of the specific program year that the income was received. Thus, for example, if a MAP activity in program year 1 yields a net revenue in program year 2 in a 3-year MAP grant, the MAP Participant should apply that revenue to MAP activities conducted in program year 2 or 3. CCC does not believe that allowing MAP Participants to establish a reserve fund with program proceeds is appropriate.

*Sec. 1485.36 Paperwork Reduction Requirements*

CCC received three comments to this section.

*Comment:* Three respondents recommended that CCC transition from solely paper recordkeeping of MAP related files to electronic recordkeeping.

*Response:* CCC understands the respondents' comments to refer to CCC's

use of the UES, the standardized online Internet application used by entities to apply to any USDA market development program, including the MAP. MAP Participants currently use the UES to submit reimbursement claims, trip reports, and other information to CCC under the MAP. While CCC believes MAP Participants' use of the UES effectively reduces costs and increases efficiencies, MAP Participants cannot transition solely from paper recordkeeping to electronic recordkeeping. The MAP final rule requires Participants to maintain records of expenditures and contributions to substantiate their MAP activities. Such records must include, *inter alia,* original receipts for all STRE (e.g., actual vendor invoices or restaurant checks) and any other program-related expenditure in excess of $75.00 (e.g., canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos). Where the original documentation is provided in paper, MAP Participants must maintain and make such paper documentation available for review for compliance and monitoring purposes.

**List of Subjects in 7 CFR Part 1485**

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC amends 7 CFR part 1485 as follows:

## PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

■ 1. The authority citation for 7 CFR part 1485 reads as follows:

**Authority:** 7 U.S.C. 5623, 5662–5663 and sec. 203, 402–403, Pub. L. 95–501, as amended, 92 Stat 1685 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

■ 2. Subpart B is revised to read as follows:

### Subpart B—Market Access Program

Sec.

1485.10 General purpose and scope.
1485.11 Definitions.
1485.12 Participation eligibility.
1485.13 Application process.
1485.14 Application review and formation of agreements.
1485.15 Operational procedures for brand programs.
1485.16 Contribution rules.
1485.17 Reimbursement rules.
1485.18 Reimbursement procedures.
1485.19 Advances.
1485.20 Employment practices.
1485.21 Financial management.
1485.22 Reports.
1485.23 Evaluation.
1485.24 Compliance reviews and notices.
1485.25 Failure to make required contribution.
1485.26 Submissions.
1485.27 Disclosure of program information.
1485.28 Ethical conduct.
1485.29 Contracting procedures.
1485.30 Property standards.
1485.31 Anti-fraud requirements.
1485.32 Program income.
1485.33 Amendment.
1485.34 Noncompliance with an agreement.
1485.35 Suspension, termination, and closeout of agreements.
1485.36 Paperwork reduction requirements.

### Subpart B—Market Access Program

#### § 1485.10 General purpose and scope.

(a) This subpart sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Market Access Program (MAP).

(b)(1) In addition to the provisions of this subpart, other regulations of general application issued by the U. S. Department of Agriculture (USDA), including the regulations set forth in Chapter XXX of this title, ''Office of the Chief Financial Officer, Department of Agriculture,'' may apply to the MAP and MAP Participants, to the extent that these regulations of general application do not directly conflict with the provisions of this subpart. These include, but are not limited to:

(i) 7 CFR part 1, subpart A—Official Records

(ii) 7 CFR part 3—Debt Management

(iii) 7 CFR part 15, subpart A—Nondiscrimination

(iv) 7 CFR part 3015—Uniform Federal Assistance Regulations

(v) 7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

(vi) 2 CFR part 417—Government-wide Debarment and Suspension (Nonprocurement)

(vii) 7 CFR part 3018—New Restrictions on Lobbying

(viii) 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

(ix) 7 CFR part 3021—Government-wide requirements for drug-free workplace (financial assistance)

(x) 7 CFR part 3052—Audits of States, Local Governments, and Non-profit Organizations

(xi) 48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to CCC are also applicable to the MAP and the regulations set forth in this part.

(3) MAP Participants must also comply with Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

(4) Other laws and regulations that apply to MAP Participants include, but are not limited to:

(i) 2 CFR part 25—Universal Identifier and Central Contractor Registration

(ii) 2 CFR part 170—Reporting Subaward and Executive Compensation Information

(iii) 2 CFR part 175—Award Term for Trafficking in Persons

(iv) 2 CFR part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

(v) 37 CFR part 401.1—Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements

(vi) Executive Order 13224, as amended, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism

(c) Under the MAP, CCC may provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities and products. MAP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. CCC expects all activities that occur in the United States for which MAP reimbursement is sought to develop, maintain, or expand the commercial export market for the relevant U.S. agricultural commodity in accordance with the MAP Participant's approved MAP program. When considering eligible nonprofit U.S. trade organizations, CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.

(d) The MAP generally operates on a reimbursement basis.

(e) CCC's policy is to ensure that benefits generated by MAP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. CCC also endeavors to enter into MAP agreements covering a broad array of agricultural commodity sectors. The MAP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of CCC.

**§ 1485.11 Definitions.**

For purposes of this subpart the following definitions apply:

*Activity*—a specific foreign market development effort undertaken by a MAP Participant.

*Administrative expenses or costs*—expenses or costs of administering, directing, and controlling an organization that is a MAP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to, rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, business cards);

(2) Personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training);

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, personal digital assistants, email, mobile email devices, postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, teambuilding, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy);

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

*Approval letter*—a document by which CCC informs an applicant that its MAP application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the MAP Participant before it becomes effective.

*Attaché/Counselor*—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

*Brand participant*—a small-sized U.S. for-profit entity, or a U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the MAP brand promotion program of another MAP Participant. This definition does not include any U.S. agricultural cooperatives that are MAP Participants that apply for MAP funds to implement their own brand programs.

*Brand promotion*—an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a MAP Participant in the brand program.

*CCC*—the Commodity Credit Corporation, including any agency or official of the United States delegated the responsibility to act on behalf of CCC.

*Contribution*—an expenditure made by a MAP Participant, the U.S. industry, or State agency in support of an approved activity. This includes expenditures to be made by entities in the MAP Participant's industry in support of the entities' related promotion activities in the markets covered by the MAP Participant's agreement.

*Credit memo*—a commercial document, also known as a credit memorandum, issued by the MAP Participant to a commercial entity that owes the MAP Participant a certain sum. A credit memo is used when the MAP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the MAP Participant owes the entity against the amount the entity owes to the MAP Participant.

*Demonstration projects*—activities involving the erection or construction of a structure or facility or the installation of equipment.

*Expenditure*—either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

*FAS*—Foreign Agricultural Service, USDA.

*FAS Web site*—a Web site maintained by FAS providing information on MAP. It is currently accessible at *www.fas.usda.gov/mos/programs/map.asp.*

*Foreign third party*—a foreign entity that a MAP Participant works with to promote the export of a U.S. agricultural commodity under the MAP program.

*Generic promotion*—an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally. A generic promotion activity may include the promotion of a foreign brand (i.e., a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted U.S. agricultural commodity or product from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos or brand names. However, in that case, the MAP Participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (i.e., a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

*MAP*—the Market Access Program.

*MAP Notice*—Market Access Program notices are documents that CCC issues for informational purposes. These MAP notices are made available electronically at *http://www.fas.usda.gov/mos/programs/mnotice.html.* These notices have no legal effect. They are intended to alert MAP Participants of various aspects of CCC's current administration of the MAP program. For example, CCC issues MAP notices to alert MAP Participants of procedures for requesting advances, applicable federal pay scale rates, lists of economic and trade sanctions against certain foreign countries, reporting formats and computer codes to use with the UES.

*MAP Participant or Participant*—an entity that has entered into a MAP program agreement with CCC.

*Market*—the country or countries targeted by an activity.

*Notification*—a document from the MAP Participant by which the MAP Participant proposes to CCC changes to the activities and/or funding levels in an approved MAP program agreement and/or approval letter.

*Product samples*—a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (e.g., fresh or processed), independent of the ultimate utilization of the sample. Product samples might be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.

*Program agreement*—a document entered into between CCC and a MAP Participant setting forth the terms and conditions of approved activities under MAP, including any subsequent amendments to such agreement.

*Program year*—Unless otherwise agreed in writing between CCC and a MAP Participant, a 12-month period during which a MAP Participant can undertake activities consistent with this subpart and its program agreement and approval letter with CCC.

*Promoted commodity*—a U.S. agricultural commodity the sale of

which is the intended result of a promotion activity.

*Sales and trade relations expenditures (STRE)*—expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion.

*Sales team*—a group of individuals engaged in an approved activity intended to result in specific sales.

*Small-sized entity*—a U.S. commercial entity that meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

*SRTG*—the acronym for State Regional Trade Group. An SRTG is a nonprofit association of state-funded agricultural promotion agencies.

*Supergrade*—a salary level above the reimbursable salary range generally allowable under MAP, which CCC may approve on a case by case basis. This salary level is available only for certain non-U.S. employees who direct MAP Participants' overseas offices.

*Temporary contractor*—a contractor, typically a consultant or other highly paid professional, that is hired on a short term basis to assist in the performance of an activity.

*Trade team*—a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

*UES Web site*—a Web site maintained by FAS through which applicants may apply online to MAP and any other USDA market development program. The Web site is currently accessible at *www.fas.usda.gov/mos/ues/unified.asp*.

*Unified Export Strategy (UES)*—is a standardized online Internet application developed by USDA and available for use by entities to apply to any USDA market development program, including the MAP.

*U.S. agricultural commodity*—any agricultural commodity, including any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46 of the United States Code, in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof, excluding tobacco. An agricultural commodity shall be considered to be U.S. origin if it is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

*USDA*—the United States Department of Agriculture.

*U.S. for-profit entity*—a firm, association, or other entity organized or incorporated, located and doing business for profit in the United States, and engaged in the export or sale of a U.S. agricultural commodity.

**§ 1485.12 Participation eligibility.**

To participate in the MAP, an entity shall be:

(a) A nonprofit U.S agricultural trade organization;

(b) A nonprofit SRTG;

(c) A U.S. agricultural cooperative; or

(d) A State agency.

**§ 1485.13 Application process.**

(a) *General application requirements.* CCC will periodically publish a Notice in the **Federal Register** that it is accepting applications for participation in MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice and in these regulations. Applicants are encouraged to submit a UES through the UES Internet Web site, but are not required to do so. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides MAP funds to brand participants for branded promotion. An applicant who is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(1) Applicant and program information.

(i) All applications shall contain:

(A) The name, address, and Internet location of the home page of the applicant organization;

(B) The name of the applicant's Chief Executive Officer;

(C) The name, telephone number, fax number, and email address of the applicant's primary contact person;

(D) The name(s) of the person(s) responsible for managing the proposed program;

(E) A description of the applicant organization, including the type of organization of the applicant (e.g., nonprofit SRTG), its mission, and the statutory authorities by which it is constituted and under which it operates, if applicable;

(F) Tax exempt identification number of the applicant, if applicable;

(G) Beginning and ending dates for proposed program year (mm/dd/yy-mm/dd/yy);

(H) Dollar amount of CCC resources requested for generic activities;

(I) Dollar amount of CCC resources requested for brand activities;

(J) Total dollar amount of CCC resources requested;

(K) Percentage of CCC resources requested for general administrative expenses;

(L) A Dun and Bradstreet DUNS number for the applicant;

(M) A description of the applicant organization's membership and membership criteria;

(N) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;

(O) A description of the applicant's management and administrative capability;

(P) A description of the applicant's prior export promotion experience;

(Q) Value, in U.S. dollars, of proposed contributions from the applicant or the applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

(R) Value, in U.S. dollars, of proposed contributions from other sources.

(ii) [Reserved]

(2) Program justification.

(i) All applications shall contain:

(A) A description of the promoted U.S. agricultural commodity(s), its harmonized tariff classification, the applicable commodity aggregate code (available from the UES Web site) and the percentage of U.S. origin content by weight, exclusive of added water;

(B) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s);

(C) The volume and value of exports of the promoted U.S. agricultural commodity(s) to the targeted markets for the most recent 3-year period;

(D) If the proposal is for 2 or more years, an explanation why the proposal should be funded on a multi-year basis; and

(E) A certification and, if requested by CCC, a written explanation supporting the certification that any funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities. An explanation, if one is requested, shall indicate why the applicant is unlikely to carry out the activities without Federal financial assistance. In determining whether Federal funds would supplement or supplant private or third-party funds or contributions, CCC will consider the applicant's prior overall marketing budget in the MAP program from year-to-year, variations in promotional strategies within a country, and new markets.

(ii) [Reserved]

(3) Proposed program's strategic plan.

(i) All applications shall include a strategic plan that contains:

(A) A description of overall long term strategic goals to be advanced by the

proposed activities for the ensuing 3–5 years;

(B) An explanation of the organization's strategic planning process and identification of priority target markets, including a summary of proposed budgets by country and commodity aggregate code;

(C) A description of the world market situation for the exported U.S. agricultural commodity(s);

(D) A description of competition from other exporters;

(E) An evaluation plan describing the applicant's goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals. This evaluation plan should set forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed MAP program's effectiveness will depend on a clear statement by the applicant of goals, method of achievement, and expected results of programming at regular intervals. The overall goal of the MAP and of individual Participants' programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant may modify and resubmit this plan for re-approval at any time during the program year.

(F) For each target country, 5 years or as many years as are available of:

(*1*) Historical U.S. export data;

(*2*) U.S. market share; and

(*3*) MAP funds received by the applicant;

(G) For each target country, 3 years of projected U.S. export data and U.S. market share;

(H) Country strategy, including market constraint(s) impeding U.S. exports (e.g., trade barriers) or opportunities present and the strategy proposed to overcome constraints or take advantage of the opportunities, previous activities in the country, and the projected impact of the proposed program on U.S. exports;

(I) A justification for any proposed overseas office, including a staffing plan listing job titles, position descriptions, salary ranges, any request for approval of supergrade salaries, and an itemized administrative budget;

(J) A description of any demonstration projects, if applicable;

(K) Data summarizing the applicant's historical and projected exports, market share, and MAP budgets of the promoted U.S. agricultural commodity(s);

(L) A written presentation of all proposed activities including:

(*1*) A short description of the relevant market constraint or opportunity;

(*2*) A budget for each proposed activity, identifying the source of funds.

(ii) Applications for brand promotion assistance shall also include in their strategic plans:

(A) A description of how the brand promotion program will be publicized to U.S. industry; and

(B) The criteria that will be used to allocate funds to U.S. for-profit entities and U.S. agricultural cooperatives.

(b) CCC may request any additional information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information.

(c) Special rules governing demonstration projects funded with CCC resources.

(1) CCC will consider proposals for demonstration projects, provided:

(i) No more than one such demonstration project per constraint is undertaken within a market;

(ii) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(iii) The demonstration project is a practical and cost effective method of overcoming the constraint; and

(iv) A third-party must participate in such project through a written agreement with the MAP Participant.

(d) Universal Identifier and Central Contractor Registration (CCR)

(1) In accordance with 2 CFR Part 25, each entity that applies to the MAP program and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Be registered in the CCR prior to submitting an application or plan;

(ii) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(iii) Provide its DUNS number in each application or plan it submits to CCC.

(2) [Reserved]

(e) Reporting Subaward and Executive Compensation Information. In accordance with 2 CFR Part 170, each entity that applies to the MAP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR Part 170 should it receive MAP funding.

**§ 1485.14 Application review and formation of agreements.**

(a) General. CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. The selection process, by its nature, involves the exercise of judgment. CCC's choice of Participants and proposed promotion projects requires that it consider and weigh a number of factors, some of which cannot be mathematically measured—e.g., market opportunity, market strategy, and management capability. CCC may require that an applicant participate in the MAP through another MAP Participant or applicant.

(b) Application review criteria. In assessing the likelihood of success of the applications it receives and deciding which it will approve, CCC will follow results-oriented management principles and consider the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization. With respect to nonprofit U.S. trade organizations, preference will be given to those organizations with the broadest base of producer representation of and affiliated industry participation for the commodity being promoted;

(4) Prior export promotion experience;

(5) Appropriateness of staffing;

(6) Adequacy of the applicant's strategic plan in the following categories;

(i) Description of target market conditions;

(ii) Description of and plan for addressing market constraints and opportunities;

(iii) Breadth of industry participation in strategic planning process;

(iv) Strategic prioritization identified in proposed plan;

(v) Export volume and value and market share goals in each target country;

(vi) Description of evaluation plan and suitability of the plan for performance measurement; and

(vii) Past program results and/or evaluations, including program success stories.

(c) Allocation factors. CCC determines which applications to approve and develops preliminary recommended funding levels for each approved application based on the following factors, in addition to those in paragraph (b) of this section. CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's MAP announcement in the **Federal Register**:

(1) Size of the budget request in relation to projected value of exports;

(2) Where applicable, size of the budget request in relation to actual value of exports in prior years;

(3) Where applicable, Participant's past projections of exports compared with actual exports;

(4) Level of contributions by the applicant and by all other sources;

(5) Market share goals in target country(ies);

(6) The percentage by weight, exclusive of added water, of U.S. agricultural commodities contained in the promoted products;

(7) The degree of value-added processing in the United States; and

(8) Proposed MAP-funded general administrative and overhead costs compared to proposed MAP-funded direct promotional costs.

(d) Approval decision.

(1) CCC will approve those applications that it determines best satisfy the criteria and factors specified above.

(2) Notification of decision. CCC will notify each applicant in writing of the final disposition of its application.

(e) Formation of agreements. CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a MAP Participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(f) Signature cards. The MAP Participant shall designate at least two individuals in its organization to sign program agreements and amendments, approval letters, reimbursement claims, and advance requests. The MAP Participant shall submit the signature card signed by those designated individuals and by the MAP Participant's CEO to CCC. The Participant shall immediately notify CCC of any changes in signatories and shall submit a revised signature card accordingly.

(g) UES ID and passwords. CCC will provide each MAP Participant with IDs and passwords for the UES Web site, as necessary. MAP Participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to MAP Participants. MAP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

(h) A MAP Participant through which small-sized U.S. for-profit entities are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized entities or U.S. agricultural cooperatives as defined in these regulations. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this subpart.

(i) Changes to activities and funding.

(1) Adding a new activity.

(i) A MAP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the MAP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description, the proposed budget, and a justification of transfer of funds.

(iii) After receipt of the notification, CCC will inform the MAP Participant via the UES Web site whether the requested budget is approved.

(2) Modifying existing activities and their funding levels.

(i) A MAP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than $25,000 or 25 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) A MAP Participant may make significant adjustments below that threshold to the funding levels for existing, approved activities without prior notification to CCC, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

**§ 1485.15 Operational procedures for brand programs.**

(a) Where CCC approves an application by a MAP Participant to run a brand promotion program that will include brand Participants, the MAP Participant shall establish brand program operational procedures. The MAP Participant annually shall submit to CCC for approval its proposed brand program operational procedures for such program year. CCC will notify all new and existing MAP Participants in writing in each Participant's annual approval letter and through the FAS Web site as to applicable submission dates for and dates for approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements.

(b) The MAP Participant shall not enter into any participation agreements with brand participants nor shall it implement any MAP brand activities for the applicable program year unless and until CCC has communicated in writing its approval of the proposed operational procedures to the MAP Participant.

(c) Participation agreements between MAP Participants and brand participants. Where CCC approves a MAP Participant's application to run a brand promotion program that will include brand participants, the MAP Participant shall enter into participation agreements with brand participants. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the MAP Participant's approved program year;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the U.S. agricultural commodity as ''American'', ''Product of the United States of America'', ''Product of the U.S.'', ''Product of the U.S.A.'', ''Product of America'', ''Grown in the United States of America'', ''Grown in the U.S.'', ''Grown in the U.S.A.'', ''Grown in America'', ''Made in the United States of America,'' ''Made in the U.S.'', ''Made in the U.S.A.'', ''Made in America'', or product of, grown in or made in any state or territory of the United States of America spelled out in its entirety, or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of ⅙ inch (.42 centimeters) in height based on the lower case letter ''o''. The use of the above terms as a descriptor or in the name of the product (e.g., Texas style chili, Bob's American Pizza) does not satisfy the product origin requirement. Phrases ''product of'', ''grown in'' or ''made in'' are encouraged, but not required. A MAP Participant may request an exemption from this requirement on a case-by-case basis. All such requests shall be in writing and include justification satisfactory to CCC that this labeling requirement would hinder a MAP Participant's promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, CCC may temporarily waive this requirement where CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to MAP Participants via a MAP notice issued on FAS' Web site;

(7) Include a written certification by the brand participant that it is either a small-sized entity as defined in this subpart or a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the MAP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable program year and make such records and documents available upon request to authorized officials of the U.S. Government.

(d) MAP Participants may not provide assistance to a single entity including a entity reincorporated or re-organized under the same or different name if the reincorporated or re-organized entity is substantially similar to the pre-existing entity, for brand promotion in a single country for more than 5 years. Such 5 years do not need to be consecutive. Such 5-year period shall not begin prior to the 1994 program year or the brand participant's first program year, whichever is later. In limited circumstances, CCC may waive the 5 year limitation if CCC determines that further assistance is in the best interests of the MAP. CCC shall, at its discretion, decide whether a reincorporated or re-organized entity is substantially similar to the pre-existing entity for purposes of applying this 5-year rule. Brand participants' participation in certain international trade shows in foreign countries will not be considered when determining such brand participants' time in country for purposes of the 5 year graduation requirement. Such shows must meet two requirements: They are food or agricultural shows, with no less than 30% of exhibitors selling food or agricultural products, and they are international shows, meaning they target buyers, distributors and the like from more than one foreign country and no less than 15% of each show's visitors are from countries other than the host country. CCC will compile a list of international trade shows that CCC exempts from the graduation requirement and such list will be announced to MAP Participants via a MAP notice issued on FAS' Web site.

**§ 1485.16 Contribution rules.**

(a) In MAP generic promotion programs, a MAP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by CCC for all generic promotion activities proposed to be undertaken by the MAP Participant.

(b) In MAP brand promotion programs, a MAP Participant conducting its own brand promotion or a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.

(c) A MAP Participant must use its own funds and may not use MAP program funds to pay any administrative costs of the MAP Participant's U.S. office(s), including legal fees, except as set forth in this subpart. Where the MAP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contributions the MAP Participant contributes to MAP generic or brand promotion programs.

(d) Eligible contributions.

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant's industry in support of the entities' related promotion activities in the markets covered by the applicant's application) or State agency will make, the MAP applicant may include the costs listed under paragraph (d)(2) of this section if:

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been and will not be reimbursed by any source for such costs.

(2) Subject to paragraph (d)(1) of this section, as well as applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) to the extent these principles do not directly conflict with the provisions of this subpart, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

(xiii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with program agreement or regulatory requirements;

(xiv) The cost of giveaways, awards, prizes and gifts;

(xv) The cost of product samples;

(xvi) Fees for participating in U.S. government sponsored or endorsed export promotion activities;

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee's or contractor's share of personal taxes;

(xix) STRE and the cost associated with trade shows, seminars, and entertainment conducted in the United States;

(xx) Other administrative expenses (e.g., supervisory travel from the U.S. to an overseas office); and

(xxi) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contributions:

(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as ''backsell'');

(iii) Any land costs other than allowable costs for office space;

(iv) Depreciation;

(v) The cost of refreshments and related equipment provided to office staff;

(vi) The cost of insuring articles owned by private individuals;

(vii) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(viii) The cost of product development, product modifications, or product research;

(ix) Slotting fees or similar sales expenditures;

(x) Membership fees in clubs and social organizations; and

(xi) Any expenditure for an activity prior to CCC's approval of that activity.

(4) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the MAP Participant as an eligible contribution.

**§ 1485.17 Reimbursement rules.**

(a) A MAP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was made in furtherance of an approved activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as applicable cost principles (e.g., 2 CFR Parts 220, 225, and 230) to the extent these principles do not directly conflict with the provisions of this subpart, for either brand or generic promotion activities, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the MAP promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products, expenditures for such advertising will not be reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement). Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples);

(5) Temporary displays and rental of space for temporary displays;

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States;

(7) Subject to § 1485.17(b)(18), expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States, such expenditures are reimbursable only if the exhibit or show is: (1) a food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS' Web site;

(8) Subject to § 1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for no more than two representatives of a single brand participant (or MAP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States. Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions;

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the MAP Participant;

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to MAP Participants via a MAP notice issued on FAS' Web site. Reimbursement is available only when: (1) The items are described in detail with a per unit cost in an approved strategic plan and (2) distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item;

(12) The design and production of packaging, labeling or origin identification, to be used during the program year in which the expenditure is made, if such packaging, labeling or origin identification is necessary to meet the importing requirements of a foreign country;

(13) The design, production, and distribution of coupons for products other than the MAP Participant's promoted products. If such activities include both coupons or price discounts for products other than the MAP Participant's promoted products as well as for MAP-promoted products,

expenditures for such activities will not be reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement);

(14) An audit of a MAP Participant as required by Office of Management and Budget Circular A–133 if the MAP is the MAP Participant's largest source of Federal funding;

(15) The translation of written materials as necessary to carry out approved activities;

(16) Expenditures associated with developing, updating, and servicing Web sites on the Internet that clearly target a foreign audience;

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the MAP Participant's UES;

(ii) The trade mission included representatives, as defined in § 1485.17(b)(8), from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv)(A) The MAP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

(*1*) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

(*2*) Pre-arranged one-on-one business meetings; and

(*3*) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

(B) Reimbursement is conditional on the MAP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel;

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, MAP funds may be used to reimburse the travel and/or non-travel expenditures of only those MAP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. Upon written request, CCC may temporarily waive this subsection, on a case by case basis, where: the trade show is segregated into product pavilions, or a company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the MAP Participant in writing; and

(19) Contracts with U.S. based organizations when the only contracted service such organizations provide to a MAP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (e.g., a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S. based organization provides administrative services to the MAP Participant's domestic home office during a program year, any direct promotional services such organization provides to the Participant, whether for the Participant's domestic or overseas offices, during the same program year are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS–15 Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(2) Approved supergrade salaries for non-U.S. citizens and non-U.S. contractors stationed overseas;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, except for approved supergrades, or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the MAP Participant shall document by a salary survey or other means, except for approved supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change;

(5) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(6) Overtime paid to clerical staff of approved MAP-funded overseas offices;

(7) Temporary contractor fees for contractors stationed overseas, except CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS–15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(8)(i) Subject to § 1485.17(b)(18), international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, international travel expenditures are covered only if the exhibit or show is: (1) A food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP Participants via a MAP notice issued on FAS' Web site.

(ii) CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate or when the MAP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the CCC determines it was impractical to provide such notice. If a traveler flies in

business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the MAP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date and the MAP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(iii) In very limited circumstances, the MAP Participant may be reimbursed for air travel up to the business class rate (i.e., a premium class rate other than the first class rate) upon prior written approval by CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare and the MAP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(C) An eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (e.g., weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(iv) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances, CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either en route or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14 hour rule for eligibility of reimbursement of business class travel or rest period expenses. A stopover is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another. All travel should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel;

(9) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status;

(10) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304);

(11) Organization costs for overseas offices approved in MAP program agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and routine accounting and legal services required to maintain the overseas office;

(12) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless email devices, personal digital assistants);

(13) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay;

(14) Accident liability insurance premiums for facilities used jointly with third-party participants for MAP activities or for MAP-funded travel of third-party participants;

(15) Market research, including research to determine the types of products that are desired in a market;

(16) Independent evaluations and audits, if not otherwise required by CCC, to ensure compliance with program requirements;

(17) Legal fees to obtain advice on the host country's labor laws;

(18) Employment agency fees;

(19) STRE incurred outside of the United States, and STRE incurred in conjunction with an approved activity taking place within the United States with prior written approval from CCC. MAP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions. MAP Participants may exceed Embassy guidelines only when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed the guidelines will not be reimbursed. MAP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines. For STRE incurred in the United States, the MAP Participant should provide, in its request for approval, the basis for determining its proposed expenses;

(20) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, emergency visitation travel for U.S. overseas employees allowed under the Foreign Affairs Manual published by the U.S. Department of State;

(21) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles;

(22) U.S. office(s) administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

(23) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States;

(24) Subject to § 1485.17(b)(18), domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for international retail, trade and consumer exhibits and shows conducted in the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: (1) A food or agricultural show with no less than 30% of exhibitors selling food or agricultural products, (2) an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15% of its visitors are from countries other than the host country, and (3) an exhibit or show that the MAP Participant has not participated in within the last three years using funds from a source other than the MAP. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which MAP reimbursement is available and such list will be announced to MAP

Participants via a MAP notice issued on FAS' Web site;

(25) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for seminars and educational training conducted in the United States;

(26) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for one home office MAP Participant employee, one MAP Participant board member, or a state department of agriculture employee paid by the MAP Participant, when such individual accompanies foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the MAP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The MAP-sponsored traveler submits a follow-up trip report to CCC that includes the following:

(A) Purpose for the individual's participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(27) Approved demonstration projects;

(28) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(29) Rental or lease expenditures for storage space for program-related materials;

(30) Business cards that target a foreign audience;

(31) Expenditures associated with developing, updating, and servicing Web sites on the Internet that: Contain a message related to exporting or international trade, include a discernible ''link'' to the FAS/Washington homepage or an FAS overseas homepage, and have been specifically approved by the appropriate FAS commodity division. Expenditures related to Web sites or portions of Web sites that are accessible only to an organization's members are not reimbursable. Reimbursement claims for Web sites that include any sort of ''members only'' sections must be prorated to exclude the costs associated with those areas subject to restricted access;

(32) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending technical barriers to trade that prohibit or threaten U.S. exports of agricultural commodities; and

(33) Membership fees in professional, industry-related organizations.

(d) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, judgments or payments relating to legal suits, challenges or disputes;

(3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase of, construction of, or lease of space for permanent, non-mobile displays, i.e., displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from CCC of such construction or purchase;

(8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts of the MAP promoted commodity;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation that CCC will determine. Such determination will be announced in writing via a MAP notice issued on FAS' Web site;

(12) Alcoholic beverages that are not an integral part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the MAP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in § 1485.17(c)(22) and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved MAP brand or generic promotion activities are reimbursable as eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR Parts 301 through 304);

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the MAP Participant to pay such employees' or contractors' share;

(29) Any expenditure made for an activity prior to CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening; and

(31) Expenditures associated with a MAP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures.

(e) Special rules for approval of supergrades.

(1) With respect to individuals who are not U.S. citizens and who are hired by MAP Participants either as employees or contractors who are hired to act as employees, ordinarily, CCC will not reimburse any portion of such individual's compensation that exceeds the compensation prescribed for the most comparable position in the FSN

salary plan applicable to the country in which the employee or contractor works. However, a MAP Participant may seek a higher level of reimbursement for a non-U.S. citizen employee or contractor who will be employed as a country director or regional director by requesting that CCC approve that employee or contractor as a supergrade.

(2) To request approval of a supergrade, the MAP Participant shall provide CCC with a detailed description of both the duties and responsibilities of the position and the qualifications and background of the employee or contractor concerned. The Participant shall also justify why the comparable FSN salary level is insufficient.

(3) Where a non-U.S. citizen employee or contractor will be employed as a country director, the MAP Participant may request approval for a ''Supergrade I'' salary level, equivalent to a grade increase over the existing top grade of the FSN salary plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan, with that percentage applied to each of the steps in the top grade. Where the non-U.S. citizen employee or contractor will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP Participant may request approval for a ''Supergrade II'' salary level, which is calculated relative to a ''Supergrade I'' in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(4) A U.S. citizen with dual citizenship with another foreign country or countries shall not be considered a non-U.S. citizen.

(f) For a brand promotion activity, CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity.

(g) CCC will reimburse for expenditures made after the conclusion of a MAP Participant's program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(h) A MAP Participant shall not use MAP funds for any activity or any expenses incurred by the MAP Participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by CCC.

(i) Except as otherwise provided in this subpart, MAP-funded travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and MAP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The MAP Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(j) CCC may determine, at CCC's discretion, whether any cost not expressly listed in § 1485.17 will be reimbursed.

**§ 1485.18 Reimbursement procedures.**

(a) Participants are required to use CCC's Internet-based UES system to request reimbursement for eligible MAP expenses. Claims for reimbursement shall contain the following information:

(1) Activity type—brand or generic;

(2) Activity number;

(3) Commodity aggregate code;

(4) Country code;

(5) Cost category;

(6) Amount to be reimbursed;

(7) If applicable, any reduction in the amount of reimbursement claimed to offset CCC demand for refund of amounts previously reimbursed and reference to the relevant compliance report or written notice; and

(8) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the MAP Participant's U.S. office to CCC.

(c) CCC will not reimburse a claim for less than $10,000, except that CCC will reimburse a final claim for a MAP Participant's program year for a lesser amount.

(d) CCC will not reimburse claims submitted later than 6 months after the end of a MAP Participant's program year.

(e) If CCC overpays a reimbursement claim, the MAP Participant shall repay CCC within 30 days of such overpayment the amount of the overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a MAP Participant receives a reimbursement or offsets an advanced payment which is later disallowed, the MAP Participant shall repay CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) MAP funds may be expended by MAP Participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If a MAP Participant discovers that MAP funds have not been properly spent, it shall notify CCC and shall within 30 days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The MAP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

**§ 1485.19 Advances.**

(a) Policy. In general, CCC operates the MAP on a reimbursable basis.

(b) Exception. A MAP Participant for generic promotion activities may request an advance of MAP funds from CCC, provided the MAP Participant meets the criteria for advance payments set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019). CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP Participant's program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP Participant's approved generic activity budget for the program year. CCC will not advance funds to a MAP Participant for brand promotion activities. When approving a request for an advance, CCC may require the MAP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered to create an unacceptable risk to the interests of the . Whether an ''unacceptable risk'' exists in a particular situation will depend on a number of factors, such as, for example, the Participant's history of performance in MAP; the Participant's perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant's responsibility or the riskiness of its activities.

(c) Interest. A MAP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in the applicable parts of this title apply (e.g., 7 CFR Parts 3015, 3016 and 3019). Interest earned by the MAP Participant on funds advanced by CCC is not program income. The MAP Participant shall remit any interest earned on the

advanced funds to the appropriate entity as set forth in the applicable parts of this title.

(d) Refunds due CCC. A MAP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the MAP Participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

**§ 1485.20 Employment practices.**

(a) A MAP Participant shall enter into written contracts with all overseas employees who are paid in whole or in part with MAP funds and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A MAP Participant shall in its overseas offices conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A MAP Participant may pay salaries or fees in any currency (U.S. or foreign). Participants should consult local laws regarding currency restrictions.

**§ 1485.21 Financial management.**

(a) A MAP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. A MAP Participant's financial management system shall comply with the standards set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016 and 3019).

(b) A MAP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) A MAP Participant shall retain all records concerning a MAP program transaction for a period of 5 years after completion of the program transaction and permit CCC to have full and complete access, for such 5-year period, to such records. These records shall include all documents related to employment of any employees whose salaries are reimbursed in whole or in part with MAP funds, whether such employees are based in the United States or overseas, such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors.

(d) A MAP Participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program-related expenditure in excess of $75.00. CCC may, from time to time, determine a different minimum level and announce that minimum level in writing to all MAP Participants via a MAP notice issued on the FAS Web site;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the MAP Participant's CCC resources accounts;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7) Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MAP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, a MAP Participant shall provide to CCC originals of documents supporting reimbursement claims.

**§ 1485.22 Reports.**

(a)*End-of-Year Contribution Report.* Not later than 6 months after the end of its program year, a MAP Participant shall submit two copies of a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the U.S. industry, and the States during that program year. A suggested format of a contribution report is available from FAS. Foreign third party contributions are not included in the end-of-year contribution report.

(b)*Trip reports.* Not later than 45 days after completion of travel (other than local travel), a MAP Participant shall electronically submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(c) *Research reports.* Not later than 6 months after the end of its program year, a MAP Participant shall submit a report on any research conducted pursuant to the approved MAP program.

(d) *Evaluation reports.* Not later than 6 months after the end of its program year, a MAP Participant shall submit a report on any evaluations conducted in accordance with the approved MAP program.

(e) Where CCC is designated the cognizant agency for audit, CCC may require the MAP Participant to submit to CCC an annual OMB Circular A–133 audit in accordance with 7 CFR Part 3052. If CCC requires an additional audit with respect to a particular agreement, the MAP Participant shall arrange for such audit and shall submit to CCC, in the manner to be specified by CCC, such audit of the agreement.

(f) CCC may require the submission of additional reports.

(g) A MAP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

**§ 1485.23 Evaluation.**

(a) Policy. (1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the MAP. Evaluation of the MAP's effectiveness will depend on a clear statement by Participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the MAP and of individual Participants' programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a MAP Participant's program, contributing to program accountability,

and providing evidence of program effectiveness.

(b) All MAP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market. This report shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program year.

(c) MAP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved MAP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the Participant's program year.

(d) When appropriate or required by CCC, a MAP Participant shall complete a program evaluation. A program evaluation is a review of the MAP Participant's entire program, or an appropriate portion of the program as agreed to by the MAP Participant and CCC, to determine the effectiveness of the MAP Participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the MAP Participant and CCC and specified in the approval letter. A MAP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation. In addition to the requirements set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019), a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The scope of the evaluation;

(3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;

(4) A description of the evaluation methodology;

(5) A description of export sales achieved;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(e) On an annual basis, or more often when appropriate or required by CCC, a MAP Participant shall complete and submit program success stories. CCC will announce to all MAP Participants in writing via a MAP notice issued on the FAS Web site the detailed requirements for completing and submitting program success stories.

**§ 1485.24 Compliance reviews and notices.**

(a) USDA staff may conduct compliance reviews of MAP Participants' activities under the MAP program. MAP Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide either a written compliance report or a letter to the MAP Participant. USDA staff will issue a compliance report if it appears that CCC may be entitled to recover funds from that Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 30 days of the date of the compliance report, the MAP Participant shall repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a MAP Participant notifies CCC within 30 days of the date of the compliance report that the Participant intends to file an appeal pursuant to § 1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed. In the absence of any finding of funds due to CCC or other non-compliance, CCC will issue a letter to the MAP Participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of MAP, CCC may require the Participant to contract for an independent audit.

(c) In addition, CCC may notify a MAP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. CCC will explain the basis for any recovery of funds from the Participant in the written notice. The MAP Participant shall within 30 days of the date of the notice repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. If, however, a MAP Participant notifies CCC within 30 days of the date of the written notice that the Participant intends to file an appeal pursuant to § 1485.24(e), the amount owed to CCC by the MAP Participant is not due until the appeal procedures are concluded and CCC has made a final determination as to the amount owed.

(d) The fact that a compliance review has been conducted by USDA staff does not signify that a MAP Participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations.

(e) Appeals.

(1) A MAP Participant may, within 60 days of the date of the compliance report or written notice from CCC, submit a written response to CCC appealing the report or notice. CCC, at its discretion, may extend the period for response.

(2) After review of the Participant's response, CCC shall determine whether the Participant owes any funds to CCC and will inform the Participant in writing of the basis for the determination. CCC will initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 1403.

(3) Within 30 days of the date of the determination, the Participant may request in writing that CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The Participant may also request a hearing.

(4) If the Participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, CCC may in its discretion have a transcript prepared at CCC's expense.

(5) CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

**§ 1485.25 Failure to make required contribution.**

A MAP Participant's required contribution will be specified in the approval letter. If the MAP Participant's required contribution is specified as a dollar amount and the MAP Participant does not make the required contribution, the MAP Participant shall

pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the MAP Participant's required contribution is specified as a percentage of the total amount reimbursed by CCC, the MAP Participant may either return to CCC the amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A MAP Participant shall remit such payment within six months after the end of its program year. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

**§ 1485.26 Submissions.**

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by CCC.

**§ 1485.27 Disclosure of program information.**

(a) Documents submitted to CCC by MAP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A—Official Records, and specifically 7 CFR 1.12, Handling Information from a Private Business.

(b) Any research conducted by a MAP Participant pursuant to a MAP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019).

**§ 1485.28 Ethical conduct.**

(a) A MAP Participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, state and local laws, and regulations. A MAP Participant shall conduct its business in the United States in accordance with applicable Federal, state and local laws and regulations. All MAP Participants must comply with the regulations in the applicable parts of this title (e.g., 7 CFR Parts 1485, 3015, 3016, 3018, 3021, 3019, and 3052).

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a MAP Participant nor its affiliates shall make export sales of U.S. agricultural commodities and products covered under the terms of the applicable MAP agreement. Nor shall such entities charge a fee for facilitating an export sale. A MAP Participant may, however, collect check-off funds and membership fees that are required for membership in the MAP Participant. For the purposes of this paragraph, ''affiliate'' means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(c) A MAP Participant shall not limit participation in its MAP activities to members of its organization. Participants shall ensure that their MAP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The MAP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its MAP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph does not apply to U.S. agricultural cooperatives when implementing their own brand program.

(d) A MAP Participant shall select U.S. agricultural industry representatives to participate in generic MAP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a MAP Participant shall submit such selection criteria to CCC for approval.

(e) All MAP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a Participant's MAP agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The MAP Participant must report any actions or circumstances that may have a bearing on the propriety of its MAP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to CCC.

**§ 1485.29 Contracting procedures.**

(a) Neither CCC nor any other agency of the U.S. Government nor any official or employee of CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to MAP Participant contracts with third parties.

(b) A MAP Participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements (e.g., 7 CFR Parts 3015, 3016, and 3019). For purposes of this subpart, the ''small purchase threshold'' referenced in 7 CFR part 3019 is the ''simplified acquisition threshold'' established by 41 U.S.C. 134.

(c) Each MAP Participant shall establish contracting procedures for contracts that are funded, in whole or in part, with MAP funds that are open, fair, and competitive.

(d) Each MAP Participant shall submit to CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with MAP funds. CCC will notify all new and existing MAP Participants in writing in each Participant's annual approval letter and through the FAS web site as to applicable submission dates for and dates for approvals of contracting guidelines. CCC's approval of such contracting guidelines will remain in place until CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by CCC, these contracting guidelines shall govern all of a Participant's MAP-funded contracting involving contracts with an annual value of $35,000 or more. CCC may determine a different minimum value and announce that minimum value in writing to all MAP Participants via a MAP notice issued on the FAS Web site. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The MAP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 306, 3019), these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision

that states that no employee, officer, board member, or agent thereof of the MAP Participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. MAP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial reward. Instead, the performance of in-country representation must be evaluated and documented by the MAP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the MAP Participant.

(e) A MAP Participant may undertake MAP promotional activities directly or through a domestic or foreign third party. However, the MAP Participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC in relation to such third-party's promotional activities and expenditures.

**§ 1485.30 Property standards.**

The MAP Participant shall insure all MAP-funded real property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

**§ 1485.31 Anti-fraud requirements.**

(a) All MAP Participants.

(1) All MAP Participants annually shall submit to CCC for approval a detailed fraud prevention program. CCC will notify all new and existing MAP Participants in writing in each Participant's annual approval letter and through the FAS web site as to applicable submission dates for and dates for approvals of fraud prevention programs. MAP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The MAP Participant shall not conduct or permit any MAP promotion activities to occur unless and until CCC has communicated in writing approval of the MAP Participant's fraud prevention program.

(2) The MAP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's MAP program agreement and/or approval letter. The MAP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by CCC or USDA to the MAP Participant for the prompt investigation of such allegation or occurrence.

(b) MAP Participants with brand programs.

(1) The MAP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The MAP Participant shall repay to CCC funds paid to a brand participant through the MAP Participant on claims that the MAP Participant or CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the MAP Participant's determination or CCC's disallowance. The MAP Participant shall repay CCC by submitting a check to CCC or by offsetting the MAP Participant's next reimbursement claim. The MAP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A MAP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for MAP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless CCC determines that the MAP Participant was grossly negligent in the operation of the brand program regarding such claims. CCC shall communicate any such determination to the MAP Participant in writing.

**§ 1485.32 Program income.**

Any revenue or refunds generated from an activity, e.g., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with MAP funds, shall be used by the MAP Participant in furtherance of its approved MAP activities in the program period during which the MAP funds are available for obligation by the MAP Participant. The use of such revenue or refunds shall be governed by 7 CFR Part 1485. Interest earned on funds advanced by CCC is not program income.

**§ 1485.33 Amendment.**

A program agreement may be amended in writing with the consent of CCC and the MAP Participant.

**§ 1485.34 Noncompliance with an agreement.**

If a MAP Participant fails to comply with any term in its program agreement or approval letter, CCC may take one or more of the enforcement actions set forth in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, and 3019) and, if, appropriate, initiate a claim against the MAP Participant, following the procedures set forth in this subpart. CCC may also initiate a claim against a MAP Participant if program income or CCC-provided funds are lost due to an action or omission of the MAP Participant.

**§ 1485.35 Suspension, termination, and closeout of agreements.**

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in the applicable parts of this title (e.g., 7 CFR Parts 3015, 3016, 3019). If an agreement is terminated, the applicable parts of this title will apply to the closeout of the agreement (e.g., 7 CFR Parts 3015, 3016, 3019).

**§ 1485.36 Paperwork reduction requirements.**

The paperwork and recordkeeping requirements imposed by this subpart have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551–0026 for this information collection.

Dated: May 4, 2012.

**Suzanne E Heinen,**

*Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.*

[FR Doc. 2012–11601 Filed 5–16–12; 8:45 am]

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Part III

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2012–13 Hunting Season; Notice of Meetings; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[Docket No. FWS–R9–MB–2012–0005; FF09M21200–123–FXMB1231099BPP0L2]**

**RIN 1018–AX97**

# Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2012–13 Hunting Season; Notice of Meetings

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2012–13 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

**DATES:**

*Comments:* You must submit comments on the proposed regulatory alternatives for the 2012–13 duck hunting seasons on or before June 22, 2012. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 27, 2012, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2012.

*Meetings:* The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 20 and 21, 2012, and for late-season migratory bird hunting and the 2013 spring/summer migratory bird subsistence seasons in Alaska on July 25 and 26, 2012. All meetings will commence at approximately 8:30 a.m.

**ADDRESSES:** *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R9–MB–2012–0005.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2012–0005; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

*Meetings:* The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

## Regulations Schedule for 2012

On April 17, 2012, we published in the **Federal Register** (77 FR 23094) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks in early July and late-season frameworks in early August. We will publish final regulatory frameworks for early seasons on or about August 16, 2012, and for late seasons on or about September 14, 2012.

## Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 20–21, 2012, to review information on the current status of migratory shore and upland game birds and develop 2012–13 migratory game bird regulations recommendations for these species, plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the July 25–26, 2012, meetings, the Committee will review information on the current status of waterfowl and develop 2012–13 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In addition, the Committee will develop recommendations for the 2013 spring/summer migratory bird subsistence season in Alaska.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

## Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

*Atlantic Flyway Council:* July 19–20, Kingsmill Resort, Williamsburg, VA.

*Mississippi Flyway Council:* July 22–23, Stoney Creek Inn, Peoria, IL.

*Central Flyway Council:* July 18–19, Econolodge Canmore, Canmore, Alberta, Canada.

*Pacific Flyway Council:* July 13, Oxford Suites, Spokane, WA.

## Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the April 17, 2012, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals and do not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. Our responses to some Flyway Council recommendations, but not others, are merely a clarification aid to the reader on the overall regulatory process, not a definitive response to the issue. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the April 17 proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

## 1. Ducks

Duck harvest management categories are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including

specification of framework dates, season length, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management.

*A. General Harvest Strategy*

*Council Recommendations:* The Atlantic Flyway Council recommended that the Eastern Mallard Adaptive Harvest Management (AHM) framework be revised on an interim basis for the 2012 and subsequent seasons by adopting the model set recently proposed by the Service, and that model weights be those derived from a retrospective analysis of breeding population changes from 2002–11.

The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

*Service Response:* As we stated in the April 17 **Federal Register**, the final AHM protocol for the 2012–13 season will be detailed in the early-season proposed rule, which will be published in mid-July.

*B. Regulatory Alternatives*

*Council Recommendations:* The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2011–12.

*Service Response:* As we stated in the April 17 **Federal Register**, the final regulatory alternatives for the 2012–13 season will be detailed in the early-season proposed rule, which will be published in mid-July.

*C. Zones and Split Seasons*

*Council Recommendations:* The Atlantic and Mississippi Flyway Councils recommended that the Service allow States to submit their proposed zone/split changes as follows: States that will use their zones for seasons that open before the Saturday nearest September 24 should submit their zone descriptions by June 1, 2012. States that will not use their zones until after the Saturday nearest September 24 should submit their zone descriptions by July 1, 2012; and by July 1 in future years when zones/split season options can be changed.

*Service Response:* As we discussed in the April 17 **Federal Register**, last year in an August 26, 2011, **Federal Register** (75 FR 53536), we finalized new guidelines for duck zones and split seasons for use by States in setting their seasons for the 2011–15 hunting seasons. We also prepared an environmental assessment (EA) on the new zone and split season guidelines and provided a brief summary of the anticipated impacts of the selected alternative with regard to the guidelines. The EA and finding of no significant impact (FONSI) on the revised guidelines is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** in the preamble of this proposed rule or by viewing on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

As part of the implementation of these new guidelines, we stated last year that those States that were capable of implementing these new guidelines immediately were allowed to do so. However, for those States not able to implement changes last year, we were committed to extending the current open season into 2012. Thus, we asked then, and again in the April 17 proposed rule, that States provide us with any changes to their zone and split season configuration by May 1, 2012, for use during the 2012–13 season. In an effort to provide additional accommodation to Flyways' and States' requests, we will allow States to submit their proposed zone/split changes and descriptions by June 15, 2012; and by June 15 in future years when zones/split season options can be changed.

**4. Canada Geese**

*A. Special Seasons*

*Council Recommendations:* The Pacific Flyway Council recommended increasing the daily bag limit in the Pacific Flyway portion of Wyoming from two geese to three geese, and increasing the possession limit from four to six birds during the special September season.

*B. Regular Seasons*

*Council Recommendations:* The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2012.

**9. Sandhill Cranes**

*Council Recommendations:* The Central and Pacific Flyway Councils recommend using the 2012 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,270 birds as proposed in the allocation formula using the 3-year running average for 2009–11. The Councils also recommended the establishment of a new hunting area for RMP greater sandhill crane hunting in Colorado. The Pacific Flyway Council also recommended the establishment of the expansion of the hunting areas for RMP greater sandhill crane hunting in Arizona and the establishment of a new RMP sandhill crane hunt area in Idaho.

**16. Mourning Doves**

*Council Recommendations:* The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70-day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70-day season for the 2012–13 mourning dove season in the States within the Central Management Unit. They also recommended that the Special White-winged Dove Area be expanded to Interstate Highway 37 in the 2013–14 season.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of doves, which represents no change from last year's frameworks.

**Public Comments**

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

**Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will have an annual effect of $100 million or more on the economy.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10, the 2010–11, and the 2011–12 seasons. At this time, we are proposing no changes to the season frameworks for the 2012–13 season, and as such, we will again consider these three alternatives. However, final frameworks will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2012–0005.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Other Required Determinations**

Based on our most current data, we are affirming our required determinations made in the proposed rule; for descriptions of our actions to ensure compliance with the following statutes and Executive orders, see our April 17, 2012, proposed rule (77 FR 23094):

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12988, 13175, 13132, and 13211.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Authority:** The rules that eventually will be promulgated for the 2012–13 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: May 9, 2012.

**Eileen Sobeck,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2012–11941 Filed 5–16–12; 8:45 am]

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