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

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 619, 620, and 630

RIN 3052–AC41

Compensation, Retirement Programs, and Related Benefits; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule amending its regulations for Farm Credit System banks and associations to require disclosure of pension benefit and supplemental retirement plans and a discussion of the link between senior officer compensation and performance. In accordance with the law, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective Date*—Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 611, 612, 619, 620 and 630 published on October 3, 2012 (77 FR 60582) is effective December 17, 2012.

Compliance Date—All provisions of this rule require compliance 30 days after the effective date, except advisory votes on compensation increases under § 611.410(b). Advisory votes on compensation increases of 15 percent or more are not required until 2015, using a baseline year of 2013.

FOR FURTHER INFORMATION CONTACT:
Deborah Wilson, Senior Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434, or
Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under parts 611, 612, 619, 620 and 630 on October 3, 2012 (77 FR 60582) amending our regulations for Farm Credit System banks and associations to require disclosure of pension benefit and supplemental retirement plans and a discussion of the link between senior officer compensation and performance. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 17, 2012. (12 U.S.C. 2252(a)(9) and (10))

Dated: December 20, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–31100 Filed 12–26–12; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG46

Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) has amended its regulations governing size and eligibility for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. This rule implements provisions of the National Defense Authorization Act for Fiscal Year 2012. The rule addresses ownership, control and affiliation for participants in the SBIR and STTR programs. This includes participants that are majority-owned by multiple venture capital operating companies, private equity firms or hedge funds.

DATES: This rule is effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618, or Edsel Brown, Assistant Director, Office of Technology, at (202) 205–7343. You may also email questions to *sizestandards@SBA.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 2012, at 77 FR 28520 (available at *http://www.gpo.gov/fdsys/pkg/FR–2012–05–15/pdf/2012–11586.pdf*), the U.S. Small Business Administration (SBA or Agency) published a proposed rule to implement provisions in the National Defense Authorization Act for Fiscal Year 2012 (Defense Authorization Act), Public Law 112–81, which affected the SBIR and STTR programs. Specifically, section 5001, Division E of the Defense Authorization Act contained the SBIR/STTR Reauthorization Act of 2011 (SBIR/STTR Reauthorization Act), which set forth several provisions relating to businesses majority-owned by venture capital operating companies (VCOCs), hedge funds or private equity firms and provided that such businesses may participate in the SBIR program, under certain conditions.

The SBIR/STTR Reauthorization Act provided a short timeframe for SBA to issue a proposed rule. Therefore, the Agency could not conduct public outreach prior to drafting and issuing the proposed rule. However, in addition to soliciting public comments, SBA conducted several public outreach sessions following publication of the proposed rule, which were coordinated by SBA's Office of Advocacy. 77 FR 30227 (May 22, 2012). SBA held these outreach sessions in Washington, DC; Boston, Massachusetts; Austin, Texas; and New Orleans, Louisiana. In addition, SBA held an online webinar.

SBA received over 250 comments in response to the proposed rule. The comments relating to specific sections of the rule are discussed in further detail below.

II. Summary of and Response to Comments

A. Section 121.701—Definitions and Programs Subject to Size Determinations

In § 121.701, SBA proposed to make it clear that the size and ownership/control regulations apply to both the SBIR and STTR programs. In addition,

SBA proposed several definitions applicable to the programs, and set forth in statute, to this section.

Specifically, SBA proposed definitions for the terms ''VCOC,'' ''hedge fund,'' and ''private equity firm.'' The proposed definitions are verbatim from the SBIR/STTR Reauthorization Act, which defined those terms. SBA received no comments on these definitions.

SBA had also proposed to define the term ''portfolio company'' because the SBIR/STTR Reauthorization Act uses that term when referring to VCOCs, hedge funds and private equity firms, but does not define it. SBA proposed to define the term ''portfolio company'' to mean any company owned by the VCOC, hedge fund or private equity firm. SBA received only one comment on the definition of ''portfolio company.'' The one comment supported SBA's definition and agreed that it is simpler and easier to understand than the Department of Labor regulation reviewed by SBA. Therefore, SBA has adopted the proposed definition of the term ''portfolio company'' as final in this rule.

SBA also proposed a definition for the term ''domestic business concern.'' That issue is addressed in the next section concerning ownership and control of the SBIR/STTR awardee.

B. Section 121.702—Ownership and Control—General

In this section, SBA proposed amendments to the ownership and control of SBIR and STTR participants. At the time SBA issued the proposed rule, SBA's existing regulations stated that an SBIR awardee must be a business concern that is at least 51% owned and controlled by U.S. citizens or permanent resident aliens, or a business concern that is at least 51% owned and controlled by another business that is at least 51% owned and controlled by U.S. citizens or permanent resident aliens. SBA considered retaining this ownership and eligibility criterion since it ensures that there is domestic ownership and control of SBIR and STTR participants. However, SBA believed this criterion was too restrictive and failed to provide sufficient flexibility to small businesses when creating their ownership structure.

As a result, SBA had proposed that an SBIR and STTR awardee must be: (1) More than 50% owned and controlled by U.S. citizens, permanent resident aliens, or domestic business concerns; or (2) majority-owned by multiple domestic VCOCs, hedge funds or private equity firms. As set forth above, SBA's then-current rule had already permitted majority ownership by more than just individuals; it also permitted majority ownership by one other business concern. The proposed rule opened the door to permit majority ownership by more than one business concern; in this case, it would have permitted majority ownership by more than one domestic business concern. (SBA also proposed eligibility requirements for those small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. That eligibility criterion is addressed in the next section).

SBA had proposed a definition for the term ''domestic business concern'' to ensure that entities owning the SBIR or STTR awardee were domestic or U.S. based companies. SBA proposed that a domestic business concern is for profit, has a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor and be created or organized in the United States, or under the law of the United States or of any State. In the preamble to the proposed rule, SBA specifically stated that it considered whether to include a requirement that to be considered a domestic business concern, more than 50% of the business must either directly or indirectly be owned by U.S. citizens, permanent resident aliens, or domestic corporations, partnerships or limited liability companies (LLCs) and requested comments on this issue.

The majority of comments received on this rule concerned the ownership and control requirements proposed and SBA's proposed definition of the term ''domestic business concern.'' SBA notes that some respondents agreed with the proposed eligibility criteria while others believed that the definition was too stringent and that SBA should broaden it. These respondents believed that having a United States base for the company and having the money spent here makes the company domestic. They believed that small businesses should see this as an opportunity to recruit more businesses and investments from abroad, as one respondent had already done. One respondent recommended SBA expand the ownership criteria to include ownership by H1 visa holders since many of them are technical people and not including them seems overly restrictive.

Most of the comments SBA received, however, stated that majority ownership of an SBIR or STTR awardee by domestic business concerns, where there is no requirement that such business concern be majority-owned by U.S. citizens, will allow foreign investors to own and control an SBIR awardee and participate in the program. These respondents thought the proposed rule created a loophole that would allow non-domestic entities to create a domestic company in the United States by merely filing some papers and owning an SBIR or STTR awardee. These respondents expressed concern that this would cause U.S. taxpayer money to be spent overseas (despite the fact there is an SBIR and STTR requirement that the work performed on an SBIR/STTR project be performed in the United States).

Other respondents expressed concern that the proposed rule would create a security risk and permit mission critical and sensitive technologies to be leaked overseas; although, at least one respondent noted that there are current restrictions by the Department of Defense and Federal Acquisition Regulations already in place to prevent this. Some respondents were concerned that the proposed rule could cause an increase in the number of SBIR and STTR solicitations being subject to International Traffic in Arms (ITAR) restrictions. Two respondents wanted SBA to limit foreign ownership to only 25% of an SBIR/STTR awardee; one respondent suggested that an SBIR/STTR awardee can be owned by U.S. companies, but the ownership must be 100%; and another suggested that the SBIR/STTR awardee must be 100% owned by U.S. citizens.

Many of these respondents asked SBA to ensure that awardees remain domestically-owned in order to increase competitiveness in the United States. These respondents requested that SBA focus on the ownership of any entity that owns an SBIR or STTR awardee rather than where that entity incorporates or is located. These respondents believed that having a limitation on foreign ownership of any entity that owns an SBIR or STTR participant will prevent any potential loopholes. Other respondents recommended SBA retain its current rule; although some of these respondents seemed confused and believed that only U.S. citizens, and no business concerns, could currently own the SBIR or STTR awardee.

In reviewing these comments and the concerns expressed by the respondents, SBA has issued a final rule that restricts foreign ownership in SBIR and STTR awardees and has therefore removed as unnecessary the definition of domestic business concern. Specifically, the final rule provides that an SBIR/STTR awardee must be a concern which is

more than 50% directly owned and controlled by one or more individuals who are citizens of the United States or permanent resident aliens in the United States, and/or other business concerns, each of which is more than 50% directly owned and controlled by individuals who are citizens of or permanent resident aliens in the United States. For example, a business that is 40% owned by U.S. citizens and 11% owned by a business concern that is in turn more than 50% owned and controlled by U.S. citizens, would be eligible for the SBIR or STTR program. SBA believes that this regulation addresses the concerns set forth in the comments that SBA should limit foreign ownership of an SBIR/STTR concern and ensure that the SBIR/STTR concern is owned and controlled by U.S. citizens.

SBA also believes that this final rule is very similar to the former eligibility rule for the program, with only one modification. This final rule allows majority ownership by multiple small businesses while the former rule allowed majority ownership by one small business; further, both this final and the former rule require that these businesses be owned and controlled by U.S. citizens or permanent resident aliens.

We also note that as in the proposed rule, SBA retained those provisions concerning ownership of an awardee by an Employee Stock Ownership Plan and eligibility of a joint venture. However, the content has been moved from § 121.702(b) into the new section on SBIR ownership in § 121.702(a) and STTR ownership in § 121.702(b) and in § 121.702(c)(6).

C. Section 121.702 –Ownership and Control by VCOCs, Hedge Funds or Private Equity Firms

The SBIR/STTR Reauthorization Act specifically permits, in certain instances, awardees that are majority-owned by multiple VCOCs, hedge funds or private equity firms to participate in the SBIR program. Therefore, SBA had proposed amending its regulations to address this new statutory requirement.

SBA received several comments stating that it should not permit business concerns that are majority-owned by multiple VCOCs, hedge funds or private equity firms to participate in the SBIR program. Other comments stated that the regulations failed to set forth the statutory limitations on such business concerns—that they receive only a certain percentage of the SBIR set-aside funds.

As noted above, the recent statutory amendments to the SBIR program specifically permit companies that are majority-owned by multiple VCOCs, hedge funds or private equity firms to participate in the program. Therefore, SBA has issued final regulations permitting such businesses to participate in the SBIR program.

In addition, we note that SBA's regulations do not address the limitations set forth in statute for participation of small businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. Specifically, the statute states that the National Institutes of Health, Department of Energy, and the National Science Foundation may award not more than 25% of their SBIR funds to such small businesses. All other SBIR agencies may award not more than 15% of their SBIR funds to these small businesses. Those restrictions are set forth in the SBIR Policy Directive, which was published as final on August 6, 2012 at 77 FR 46806 (available at *http://www.gpo.gov/fdsys/pkg/FR–2012-08-06/pdf/2012-18119.pdf*). Because those provisions do not relate to the size or ownership of an SBIR/STTR awardee, they are not part of this regulation and only set forth in the policy directive.

SBA also received several comments stating that businesses that are majority-owned by VCOCs, hedge funds or private equity firms should not participate in the STTR program. When drafting the regulations, SBA considered the fact that the statutory provisions relating to majority ownership by VCOCs, hedge funds or private equity firms specifically apply to the SBIR program. In addition, SBA considered the fact that § 5104 of the SBIR/STTR Reauthorization Act permits a small business concern that received a Phase I award under the SBIR or STTR program to receive a Phase II award in either the SBIR or STTR program. Therefore, an SBIR Phase I awardee may be able to receive an STTR Phase II award. Therefore, SBA believed that the eligibility rules of both programs should be the same and consistent. As a result, SBA's proposed amendments relating to concerns that are majority-owned by multiple VCOCs, hedge funds or private equity firms applied to both the SBIR and STTR programs.

Several respondents argued that concerns that are majority-owned by multiple VCOCs, hedge funds or private equity firms should not be able to participate in the STTR program because it was not so intended by Congress. One respondent believed that money in the STTR program is already going to universities and this proposal would dilute the program more for small businesses. SBA has reviewed this issue and has decided that such businesses may not participate in the STTR program. SBA has revised the rule accordingly and has set forth two separate eligibility criteria—one for the SBIR program (§ 121.702(a)) and one for the STTR program (§ 121.702(b)).

SBA also received several comments stating that the rule needs to ensure that the VCOC, hedge funds and private equity firms that own an SBIR awardee are more than 50% owned by U.S. citizens and/or not controlled by foreign investors. Many respondents suggested that the VCOC, hedge fund and private equity firm disclose their foreign ownership. SBA has reviewed these comments and has retained the requirement in the rule that the VCOC, hedge fund or private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the laws of the United States or of any State in order to ensure that it is domestically-owned and not foreign-controlled. SBA believes that it would be difficult for small businesses to certify as to the ownership of a VCOC, hedge fund or private equity firm without undue burden.

In addition, a few respondents believed that there were some potential loopholes with the ownership by VCOCs, hedge funds or private equity firms. Specifically, one respondent stated that the same investors could own several VCOCs, which in turn own the SBIR awardee. Although on paper the SBIR awardee would be majority-owned by several VCOCs, in reality it would be owned and controlled by the same group of investors. Another respondent stated that a domestic company could own more than 50% of an SBIR awardee and in turn, that domestic company is owned by a VCOC. In essence, one VCOC could own more than 50% of an SBIR awardee.

SBA does not believe the final rule creates these loopholes. First, any awardee that is majority-owned by VCOCs, hedge funds or private equity firms will be subject to the limitation on awards to such business. We do not believe that investors will set up several VCOCs and have those VCOCs invest in an SBIR awardee simply to skirt the limitations on the awards to small businesses that are majority-owned by VCOCs. Second, under the rules a small business that owns more than 50% of an SBIR awardee could not, in turn, be majority-owned by a VCOC since the rule requires that such business concerns be more than 50% owned by U.S. citizens or permanent resident aliens.

Finally, two respondents believed that one VCOC should be permitted to own

more than 50% of an SBIR awardee. One respondent stated that it is easier to work with one investor than with multiple investors. In response to these comments, we note that the SBIR/STTR Reauthorization Act specifically permits participation in the SBIR program by businesses that are majority-owned by *multiple* VCOCs, hedge funds or private equity firms. As a result, SBA is implementing those provisions and is not permitting majority ownership by a *single* VCOC, hedge fund or private equity firm.

D. Section 121.702—Ownership and Control—Fully Diluted Basis

SBA received one comment stating that it should evaluate ownership and control of a company using fully diluted shares on a converted basis. This respondent stated that this is the financial figure companies commonly provide to investors to assess their financial situation. Therefore, it is easy for a company to provide this information. Determining ownership and control on a fully diluted basis means that all of the following would be considered: Outstanding common stock, all outstanding preferred stock (on a converted to common basis), all outstanding warrants (on an as exercised and converted to common basis), all outstanding options and options reserved for future grants, and any other convertible securities on an as converted to common basis. This respondent believes it would accurately reflect ownership and ensure that companies are consistently providing the most transparent information regarding ownership. In addition, the respondent believed that this type of evaluation should also be used to determine affiliation.

SBA agrees with this comment and has added this to the final rule at § 121.702(d). SBA believes that this provision clarifies this issue and utilizes a definition that is most commonly used in the market and is therefore consistent with generally accepted market practice. In addition, SBA's regulations have always given present effect to stock options when calculating an individual's or entity's ownership and control and it is thus logical and consistent to have that be the case when calculating total ownership and control of the business. This will clarify how SBA determines affiliation, ownership and control for the program.

E. Section 121.702—Size and Affiliation

1. Size—500 Employee Size Standard

Section 5107(c)(3)(B) of SBIR/STTR Reauthorization Act requires that under the already existing authority for SBA to establish size standards, 15 U.S.C. 632(a), SBA shall establish size standards for awardees that are majority-owned by multiple VCOCs, hedge funds or private equity firms. The current size standard for SBIR and STTR awardees is 500 employees. This means that an awardee, including its affiliates, cannot have more than 500 individual employees on a full-time, part-time or other basis, and includes employees obtained from a temporary employee agency, professional employer organization, or leasing concern. SBA uses the average number of the business concern's employees based upon the number of employees for each of the pay periods for the preceding completed 12 calendar months (*see* 13 CFR 121.106(b)(1)) to determine the size of the business.

SBA had reviewed the 500-employee size standard and did not propose any changes. The 500 employee size standard is the current size standard for all research and development (R&D) North American Industry Classification System (NAICS) codes, including SBIR and STTR. For example, both NAICS 541711, Research and Development in Biotechnology, and NAICS 541712, Research and Development in the Physical, Engineering and Life Sciences (except Biotechnology) have 500 employee size standards.

Some respondents recommended that SBA retain the current size standard. Other respondents stated that the size standard should be lowered and believed that the size standard should be anywhere from 20 to 300 employees. Most of these respondents believed that any company with more than 100 employees has sufficient capital for their business and does not need to participate in a small business set-aside program. Some respondents thought there should be a dual size standard—a receipts-based and employee-based size standard for SBIR and STTR awards. Two respondents recommended a gross revenue or asset limitation in addition to the employee size standard. Two other respondents recommended SBA define size in categories (very small/small or discovery, early stage, small business growth). Three respondents believed SBA should only count full-time or full-time equivalents as employees and not count individuals working part-time as employees.

SBA notes that in 2007, it began a comprehensive review of its size standards to determine whether existing size standards have supportable bases relative to the current data, and to revise them, where necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), Pub L. 111–240, which directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and review of all size standards not less frequently than once every 5 years thereafter. SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis. When SBA reviews those size standards relating to R&D, it will also review the SBIR and STTR size standards. Therefore, SBA is retaining the current 500 employee size standard.

2. Affiliation—General (§ 121.702(c)(1))

SBA had proposed to amend its regulations relating to affiliation, solely for purposes of the SBIR and STTR programs. SBA's regulations, at § 121.103, address the principles of affiliation. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Affiliation is an important issue when determining size because SBA counts the receipts, employees, or other measure of the business, and includes those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit (13 CFR 121.103(a)(6)).

Specifically, section 5107(c)(3)(D) of the SBIR/STTR Reauthorization Act set forth an outline for affiliation with respect to those concerns that are majority-owned by VCOCs, hedge funds, or private equity firms, as well as any other business that the VCOC, hedge fund, or private equity firm has financed. In reviewing these statutory provisions, the purpose of the amendments to the SBIR and STTR programs, the purpose of the SBIR and STTR programs, and the overall goal of simplification and maximization of benefits for small businesses, SBA proposed amendments to the current affiliation rules, solely with respect to these programs. As a result, SBA proposed to address size and affiliation for the SBIR and STTR programs in § 121.702, and not in § 121.103, to avoid any confusion. In the proposed rule, SBA sought comments on its proposal to create bright-line tests for SBIR and STTR participants to apply when

determining eligibility with respect to size and affiliation. In addition, SBA sought specific comments on various sections of the proposed rule relating to affiliation.

SBA received numerous comments on its proposed affiliation regulations. Some respondents thought that SBA should retain its current affiliation rules while others thought that the proposed rules are understandable, prevent undue control and meet legislative intent.

SBA also received several comments on the specific affiliation rules it proposed. As a result of the comments received, SBA believes that some changes to the current and proposed affiliation rules are needed and has addressed each below.

3. Affiliation—Minority Ownership Rule (§ 121.702(c)(2))

SBA sought comments on what has come to be known as the ''minority ownership rule.'' Specifically, in the proposed rule SBA explained that where an SBIR or STTR awardee's voting stock is widely held or two or more persons hold large blocks of voting stock but no one person owns more than 50% of the stock, then it would deem the board of directors to control the awardee. SBA sought comments on that proposal as well as comments on whether it should: (1) Retain the current affiliation rule with respect to minority stock holdings and if so, whether it should set forth a specific threshold by which it will find control and therefore affiliation (*e.g.,* if a person owns 33% or more of the company) in order to create a bright-line test for awardees; (2) find affiliation if two or three persons or businesses collectively own more than 50% of the awardee, and the same two or three persons or businesses collectively own more than 50% of any other company or entity; or (3) implement a rule setting forth both options (1) and (2) above.

SBA received numerous comments stating that SBA should retain the current version of the minority ownership rule. Most of these respondents were concerned that by removing the minority ownership rule, it would allow a large business to own 49% of an SBIR/STTR awardee, or even two large businesses to own most of the company and still be eligible. These respondents thought that eliminating the rule would create a loophole. Other respondents believed that SBA should not focus on the board of directors controlling the company, but should focus on stock or equity ownership in the company. A few respondents stated that venture capital shareholders that own a minority of the company still control the company by other means, such as control of the board, unilateral right to force a sale, budgets, officers, acquisitions, etc. Two respondents appear to argue that SBA should have separate affiliation rules for venture-backed companies that have been through complex legal negotiations, and other companies.

SBA also received comments supporting SBA's creation of a bright line test for determining affiliation. One respondent stated that the proposed rule reflected congressional intent and created clear and precise benchmarks. Another respondent stated that SBA should retain the proposed rule finding affiliation only if the entity owns 50% or more of the awardee as long as SBA retains the other affiliation rules to ensure that the minority shareholder is not really controlling the company.

SBA also received one comment on the alternatives proposed concerning the minority shareholder rule. This respondent thought that the alternatives were overly burdensome and may cause affiliation with companies with different goals and risk but merely with shared investors. The respondent believed that SBA should not affiliate companies if two or three persons own more than 50% of an SBIR/STTR awardee and more than 50% of another business since it is normal for investors to invest in similar companies but have these investments considered individual investments.

SBA understands the concerns expressed by the respondents that do not want SBA to change its regulation on the minority shareholder rule. Under that regulation, if a business concern's stock is widely held and no single block of stock is large as compared to others, then SBA deems the board of directors and President or Chief Executive Officer to control the business concern, unless they can present evidence showing otherwise. In addition, if two or more persons own, control or have the power to control less than 50% of the concern's voting stock, but the blocks of stock are equal or approximately equal in size and the aggregate of the holdings is large as compared with other stock holdings, then SBA presumes each person to control the business concern.

SBA believes that retaining the current minority shareholder rule would be contrary to the broader mandate of simplifying and clarifying government regulations. In fact, SBA's Office of Hearings and Appeals (OHA) has stated that there is nothing that defines these requirements in the minority shareholder rule. For example, OHA has stated that there is nothing that ''defines exactly how much larger the single-largest minority interest must be 'compared to other outstanding blocks of voting stock' in order to cause affiliation under 13 CFR 121.103(c)(1).'' *Size Appeal of SIGA Technologies, Inc.,* SBA No. SIZ–5201 (2011) (available at *http://www.sba.gov/oha/3393*). As a result, SBA has issued a final rule that takes both views into consideration and slightly amends the current minority shareholder rule to create a test for a small business to use when determining its size.

The final rule states that for determining affiliation based on stock ownership, SBA will find a concern is an affiliate of a person that owns, or has the power to control, more than 50 percent of the company's voting stock; however, SBA may also find a concern an affiliate of a person that owns, or has the power to control, 40% or more of the voting stock based upon the totality of circumstances. SBA reviewed OHA decisions to determine that there may be affiliation with a minority shareholder holding more than 40% of the equity in a business, but there is less of a likelihood of finding affiliation with a minority shareholder holding less than 40% of the equity. *See Size Appeal of Cytel Software, Inc.,* SBA No. SIZ–4822 (2006) (available at *http://www.sba.gov/oha/3393*) (44.07% of voting stock is large compared to the next block of 24.75%); *Size Appeal of Procedyne Corp.,* SBA No. SIZ–4354 (1999) (available at *http://www.sba.gov/oha/3393*) (42.1% is large compared to the next block of 18.9%); *Size Appeal of Asphalt Products Corp.,* SBA No. SIZ–2589 (1987) (available at *http://www.sba.gov/oha/3393*) (45% is large compared to the next block of 30%); *Size Appeal of Lebanon Foundry & Machine Company,* SBA No. SIZ–2433 (1986) (available at *http://www.sba.gov/oha/3393*) (45% is large compared to the next block of 30%); and *Size Appeal of U.S. Grounds Maintenance, Inc.,* SBA No. SIZ–4601 (2003) (available at *http://www.sba.gov/oha/3393*) (46.67% is large compared to the next block of 33.33%).

In addition, SBA has also included a separate paragraph in the rule stating that it will find affiliation under the totality of circumstances even if no one single factor for finding affiliation exist at § 121.702(c)(10). That means that SBA could find affiliation with a minority shareholder (including one that owns less than 40% equity in the SBIR/STTR awardee) if the totality of the circumstances so warrant such a finding. Consequently, we believe that the combination of all of these provisions in the final rule simultaneously helps give clearer guidance to small businesses while

providing SBA with the flexibility it needs to find affiliation in those cases where businesses may be trying to game the system, which was one of the primary comments received on the rule.

4. Affiliation—Common Management (§ 121.702(c)(3))

SBA received one comment stating that it needs a more explicit test for finding control based upon common management. Specifically, this respondent believes that the officer, managing member, etc. should also be required to own more than 50% of the board seats of another business or own more than 50% of the business.

SBA does not agree with this comment. There are separate tests for affiliation—one finding affiliation based on ownership of equity in the company and one finding affiliation based on management. The two are sometimes intermixed, but it would not be necessary for a finding of affiliation. If a person is the President of one company and also the President of another company, SBA will continue to find that the two companies are affiliated.

5. Affiliation—Identity of Interest (§ 121.702(c)(4))

According to the proposed rule, SBA may find affiliation if two or more persons have an identity of interest, which includes family members with identical or substantially identical business or economic interests or firms that are economically dependent through contractual or other relationships. An individual or firm may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

One respondent urged SBA to loosen the ''economic dependence'' element of the identity of interest affiliation rule based on the unique circumstances of research firms. SBA agrees with the comment that in certain situations, such relationships may not constitute affiliation. That is why the rule specifically allows a small business to rebut any presumption of affiliation based upon an identity of interest. SBA did not include the specific reference to research collaborations in the final rule because each situation is different and SBA may still find affiliation to exist based on research collaborations in combination with other factors.

However, based on this comment, SBA did believe it was important to establish a specific standard by which it may find economic dependence under the identity of interest rule. According to SBA's OHA, it ''has found identity of interest based on economic dependence when one firm relies upon another for 70% or more of its receipts.'' *Size Appeal of Faison Office Prods., LLC,* SBA No. SIZ–4834, at 10 (2007) (available at *http://www.sba.gov/oha/3393*). Therefore, in the final rule SBA has stated that it may find affiliation based upon economic dependence if the SBIR/STTR awardee relies upon another entity for 70% or more of its receipts.

6. Affiliation—Newly Organized Concern Rule(§ 121.702(c)(5))

In the proposed rule, SBA sought input on whether the newly organized concern rule applied to the SBIR/STTR programs, which are research and innovation programs. SBA received a few comments stating that such a rule does not apply to these programs and prevents the creation of spin-off firms. One respondent suggested that SBA should specify a number of years after which a firm would no longer be considered ''new'' under the rule.

Upon further review, SBA believes that the newly organized concern rule is an important affiliation rule since it is used to prevent a new company from forming and subcontracting all of its work to another company that is other than small or otherwise does not meet the eligibility requirements of the program. As a result, SBA is retaining the rule. However, SBA agrees that the rule could be further defined for the SBIR/STTR programs and therefore SBA has issued a final rule stating that a firm that has been actively operating continuously for more than one year will no longer be considered ''new'' for purposes of this affiliation rule.

7. Affiliation—Ostensible Subcontractor (§ 121.702(c)(7))

SBA also proposed to find affiliation based upon the ostensible subcontractor rule. Two respondents asked SBA to amend the ostensible subcontracting rule so it would not cause affiliation between SBIR/STTR awardees and a subcontractor performing testing or trials of drugs or other products. These respondents explained that it is too costly for small businesses to perform such tests, especially on humans, and that most companies use Clinical Research Organizations to perform such tests. These respondents did not believe they should be found affiliated with such organizations.

SBA agrees with the comments. Although SBA does not believe it would find an SBIR/STTR awardee affiliated with a company performing product testing under the ostensible subcontracting rule (unless of course testing is the sole purpose of the funding agreement), we do not believe it is necessary to specifically state so in a rule. There are many other instances where SBA would not find affiliation under the ostensible subcontractor rule and as a result, we cannot enumerate each and every one of them in the final rule.

8. Affiliation—License Agreements (§ 121.702(c)(8))

In the proposed rule, SBA stated that it will consider whether there is a license agreement concerning a product or trademark which is critical to operation of the licensee when determining affiliation. However, the rule explained that a license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss. SBA explained that it may find affiliation through other means, such as common ownership or common management.

Two respondents suggested a provision that would find affiliation where a large company has exclusive rights to the intellectual property that would be developed by the SBIR/STTR awardee. SBA believes its regulation addresses this scenario by allowing SBA to find affiliation where the licensee does not have the right to profit from its efforts. Therefore, SBA does not believe any changes are necessary.

One respondent further sought a definition of ''critical to operation'' with respect to affiliation based on license agreement. SBA clarifies here that the use of the phrase ''critical to operation'' was intended to exclude any non-critical licenses from affiliation analysis. The affiliation rule here is an adapted version of the franchise rule that SBA uses in its government contracting and financial assistance programs. SBA does not believe any amendment to the proposed rule is required and would use a common sense approach and consider a license agreement to be critical to operation when it as integral to a participant's business as a franchise is to a franchisee.

F. Section 121.704—When SBA Determines Size and Eligibility

SBA's proposed regulations for the SBIR and STTR programs stated that size and eligibility would be determined at the time of submission of the funding agreement offer and at the time of award for both Phase I and Phase II awards. SBA had requested comments on this proposal and comments on whether it should retain the current requirement that the small business certify its size and eligibility at the time of award only.

Several respondents agreed with the proposed rule and stated that it was appropriate to require certification at time of offer and award. At least one respondent stated that the company should be an established business at the time it submits its proposal. Two respondents agreed that certifying at time of offer is more straightforward because it provides a date certain. Three respondents believed that SBA should require a certification at time of offer and perhaps at time of award, but not during the lifecycle of the program.

Other respondents argued that SBA should only require a small business to certify at the time of award and not require the business to certify at the time of offer. These respondents believe that there should only be certification at the time of award because: Screening small businesses at time of offer is too restrictive and will decrease the number of applicants; there is too much of a lag time between the offer and award and it would maximize the program to require certification at the time of award only; establishing a business is expensive and this should only be required if the company will receive an award; and having certification at the time of offer would allow non-eligible businesses to write a proposal and establish a front company to submit the proposal and acquire the awardee while they wait for the award. One respondent thought we should require certification 30 days prior to award.

In addition, several respondents argued that they would be unable to meet the principal investigator requirement at the time they submit an offer and, therefore, they should only certify at the time of award. One respondent stated that a person should not have to waste resources trying to comply with the requirements at the time of offer, when they are unsure they will even get an award.

We note that several of these respondents misunderstood the proposal. For example, SBA proposed a certification as to size and eligibility (ownership and control requirements) in the rule. Any certification that the principal investigator will spend a certain percentage of his/her time working for the small business has nothing to do with size and eligibility (ownership and control). Therefore, certifications for size and eligibility at the time of submission of a proposal would not have required anything concerning the principal investigator. In other words, the principal investigator could remain at their other job until award, and then go to work for the small business.

In addition, many respondents believe they do not have to be an established business entity at the time they submit the offer. These businesses should consider the fact that the U.S. Government Accountability Office (GAO) has stated the following: ''It is true that a contract cannot be awarded to any entity other than the one which submitted the proposal.'' *Command Management Services, Inc.,* B–310261, B–310261.2, Dec. 14, 2007, 2008 CPD ¶ 29 (available at *http://www.gao.gov/legal/index.html*). GAO believed that having a different offeror and awardee may not bind any legal entity to the contract obligations or may evidence an unacceptable transfer or assignment of proposals. *Trandes Corporation,* B–271662, Aug. 2, 1996, 96–2 CPD ¶ 57 (available at *http://www.gao.gov/legal/index.html*).

Nonetheless, SBA has decided to retain its current rule and require certification as to size and eligibility (ownership and control) at the time of award only. However, we note that the SBIR and STTR Policy Directives will also require the small business to certify it meets the other program criteria (*e.g.* performing the required percentage of work, employing the principal investigator) at the time of award and during the lifecycle of the award. Further, there may be other certifications required by the System for Award Management (SAM), the new online system that consolidates the capabilities that used to be found in the Central Contractor Registration and Online Representations and Certifications Application.

SBA also requested comments on how to treat an SBIR/STTR business that becomes other than small or is acquired by or otherwise merged with another entity during an SBIR/STTR award. For example, with respect to small business status for government contracting, the small business is permitted to grow to be other than small during the life of the contract and there is no need for it to re-represent its status on a particular contract or for the government to terminate the contract. There are two exceptions to this general rule: (1) A small business must recertify its status if it has been acquired by or merged with another business concern; or (2) the contract is greater than five years. At those times, the small business must recertify its status and if it is no longer small, the contracting officer cannot count any options exercised or orders issued against the contract as an award to a small business. SBA had requested comments on whether this policy and the procedures should be extended to the SBIR program.

SBA received one comment supporting this proposal. The respondent agreed with recertification if there has been a merger or acquisition or the contract or grant exceeds five years (which is rare for a Phase I or Phase II award). As a result, SBA has decided to adopt this proposal in the final rule. Therefore, if an SBIR or STTR awardee is acquired during performance of an SBIR or STTR funding agreement, it is permitted to continue working on the funding agreement. However, it would be required to recertify its size and ownership and control status and if it is no longer small (no longer meets the size/ownership/control requirements of the program), the agency cannot use SBIR funds for the next option on a funding agreement that is a contract or grant or for continuation of a grant. This would mean the agency could fund the award, but not using SBIR/STTR money. SBA has added this requirement to the final rule at § 121.704(b). This is modeled after the recertification provision in SBA's size standard rules. 13 CFR 121.404(g).

SBA has added this requirement to the final rule at § 121.704.

G. Section 121.705—Certification of Size and Eligibility

Section 5107 of the SBIR/STTR Reauthorization Act requires that all small business concerns that are majority-owned by multiple VCOCs, hedge funds, or private equity firms and qualified for participation must register with SBA prior to or on the date that it submits an application in response to an SBIR solicitation or announcement. In addition, the new statutory provisions require that such small businesses indicate in any SBIR proposal that they have completed this registration. SBA had proposed to amend this section of the regulations to address these new requirements. SBA requested comments on whether it should maintain a separate registration for purposes of the SBIR and STTR programs only, or should amend its current Dynamic Small Business Search (DSBS) system to use as its registry.

SBA received one comment stating that those small businesses that are majority-owned by VCOCs, hedge funds or private equity firms should register, but the registration should be a self-certification. SBA received another comment stating that SBA should create a new registry because we would be collecting more and different information than collected for DSBS.

SBA agrees with these comments. At this time, SBA is working on creating a database, which would be part of the SBIR/STTR system known as Tech-Net.

This database will serve as a registration portal for SBIR and STTR small businesses. This final rule states that such businesses must self-certify their status. SBA has addressed more specifics about the registry and the registration requirements in its policy directives, which can be found at 77 FR 46806 (SBIR Policy Directive, available at *http://www.gpo.gov/fdsys/pkg/FR–2012–08–06/pdf/2012–18119.pdf*) and 77 FR 46855 (STTR Policy Directive, available at *http://www.gpo.gov/fdsys/pkg/FR–2012–08–06/pdf/2012–18119.pdf*).

In addition, section 5107(a) of the SBIR/STTR Reauthorization Act states that certain ''covered small business concerns'' are eligible to receive SBIR awards, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program at the time of award, if an agency took longer than nine months from the date applications were due to issue an award. A covered small business concern is one that was not majority-owned by multiple VCOCs, hedge funds, or private equity firms at the time of submission of a Phase I or Phase II application (and therefore did not register), but that was majority-owned on the date of award.

The proposed regulations addressed this statutory provision concerning covered small business concerns and stated that if a small business concern did not register as majority-owned by multiple VCOCs, hedge funds or private equity firms at the time it submitted its application, it must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple VCOCs, hedge funds, or private equity firms.

SBA received one comment that supports the rule. SBA also received one comment stating that such covered small businesses should not be allowed to participate in the program since at least one SBIR agency often exceeds the 9 month timeframe for making an award. SBA notes that such business concerns are permitted to participate by statute, and therefore this eligibility requirement is set forth in the final rule. As a result, SBA has adopted its proposed rule on this as final.

H. Section 121.1001(a)(4)—Initiating a Protest or Request for Formal Size Determination

In § 121.1001(a)(4) of the proposed rule, SBA set forth who may initiate a size protest or request a formal size determination. SBA had proposed amending this section to state that a current offeror and the Associate Administrator, Investment Division may file a protest. Some of these proposed changes corresponded to the move of SBA's Office of Innovation to its Investment Division.

SBA received one comment noting that there is a redundancy and possible error in the proposed rule, since it states twice that an offeror can file a size protest. SBA has amended and deleted the redundancy and the final rule now permits any offeror or applicant, the funding agreement officer, or personnel from SBA to file a protest.

I. Section 121.1004—Time Limits that Apply to Size Protests

In this section, SBA proposed to address when a protest may be filed by an offeror/applicant, the contracting officer/funding agreement officer, or SBA with respect to an SBIR or STTR award. The current regulations state that the contracting officer or SBA may file a protest in anticipation of an award. SBA proposed to amend this regulation to state that SBA or the contracting officer/funding agreement officer may file a protest at any time, as long as it is not premature. This means that SBA would not accept a size protest until the awardee has been selected and notified of the award, which is consistent with current practice for its contracting programs.

SBA received one comment stating that neither SBA nor the funding agreement officer should be allowed to file a protest after award. Another respondent stated that SBA should request payroll records to determine size and should audit the business when it is at 50% of its employment size limit.

SBA disagrees with the comment that a protest should not be filed after award by the SBA or the funding agreement officer. SBA may not find out about an award and the funding agreement officer may not receive credible information about the business until after the award is issued. Therefore, SBA and the funding agreement officer should be permitted to still file a size or eligibility protest if there is credible information that the awardee does not meet the program's requirement. If SBA or the funding agreement officer did not file such a protest, then the same awardee could continue to receive awards for which they might not be eligible. Therefore, SBA has adopted the proposed rule as final.

Further, SBA does not *per se* audit the SBIR and STTR awardees. Instead, SBA will collect payroll and other information during the course of a size protest.

J. Other

SBA received several comments that are outside the general scope of this rulemaking. For example, we received comments that SBA should: allow the principal investigator to spend less than 50% of his/her time working for the small business; level the playing field between states with a smaller number of SBIR awardees and those with a higher number of SBIR awardees; amend the award threshold; ban lobbying for SBIR companies; limit the number of Phase I awards and the total lifetime accumulated SBIR funds that can be awarded to a small business; require reviewers to review recent patent filings to determine the List of Topics for a solicitation; use SBIR money to only fund risky innovations; help inexperienced bidders; give priority in awards to innovate start-ups; lower the percentage of work a small business is required to perform for a Phase I award; and address disputes involving Phase III awards. SBA has addressed many of these issues in the SBIR and STTR Policy Directives, which are available at 77 FR 46806 (SBIR Policy Directive) and 77 FR 46855 (STTR Policy Directive).

Compliance With Executive Orders 12866, 12988, 13132, 13563, the Paperwork Reduction Act (44 U.S.C., Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule is a significant regulatory action under Executive Order 12866; however this is not a major rule under the Congressional Review Act (CRA). SBA set forth its Regulatory Impact Analysis in the proposed rule and received five comments on it. We have updated the analysis and addressed the comments below.

Regulatory Impact Analysis

1. Necessity of Regulation

This regulatory action implements the SBIR/STTR Reauthorization Act. Specifically, it implements section 5107 of the SBIR/STTR Reauthorization Act of 2011, which requires SBA to issue final regulations amending 13 CFR 121.103 (relating to determinations of affiliation applicable to the SBIR program) and 13 CFR 121.702 (relating to ownership and control and size for the SBIR program) within one year of passage of the Reauthorization Act.

SBA has amended its regulation to address affiliation, ownership and control for participants in the SBIR and STTR programs. In addition, the agency amended its regulations to address the

new statutory provisions relating to majority ownership of SBIR awardees by VCOCs, hedge funds or private equity firms.

2. Alternative Approaches to Rule

SBA considered numerous alternatives when drafting this regulation, which were set forth in the preamble to the proposed rule. SBA received and considered over 250 comments on the proposed rule. Many of the comments set forth alternatives to SBA's proposed rule, which are discussed in the proposed rule preamble. SBA has adopted some of the recommendations set forth in the comments.

3. The Potential Benefits and Costs of This Regulatory Action.

In the proposed rule, SBA stated that one potential benefit of the rule is to increase participation in the SBIR and STTR program by providing more businesses access to these programs. SBA stated that the increase in competition would ultimately increase the quality of proposals and spur innovation.

SBA received four comments on this analysis. Three respondents argued that there is no need to increase competition in the SBIR and STTR programs or that increased competition will result in better proposals. These respondents believe that the programs are already competitive; there is simply not enough money to fund all of the proposals.

Competition is one of the central principles of contracting. It is generally believed that when an agency receives multiple offers, there is an increased likelihood the government can acquire higher quality goods and services at lower prices than it would acquire if it awarded contracts without competition or with less competition. However, we understand the concern that these small businesses have expressed concerning the impact this regulation may have on the programs and the potential increase in the number of applications submitted in response to an SBIR or STTR solicitation. We note that agencies are required to report certain information to SBA, so that SBA can monitor the number of applications submitted and the number of awards issued under the program. This information is available at *www.sbir.gov.* SBA will continue to review this information and monitor any impact on the program.

SBA also received a comment stating that we should take into account the impact of job losses in the U.S. and the increase in jobs overseas as a result of this rule. SBA does not believe this rule will increase job losses in the U.S. or result in an increase in jobs overseas and the respondent provided no data or evidence to support the contention.

In the proposed rule, SBA stated that there are a few anticipated costs. The statute requires SBA to maintain a registry of businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. SBA will maintain a separate system for its registry and this will result in a cost to SBA. Further, as a result of the anticipated increase in proposals for the SBIR/STTR program, we continue to believe the agencies will have a need for additional staff. In addition, we continue to anticipate there may be an increase in size protests, which will increase SBA's size specialists' current workload.

SBA received one comment on the potential costs. This respondent believes that there will be additional recordkeeping costs and this will reduce funds spent on developing the technology. This respondent recommended that SBA increase only the recordkeeping costs for businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. SBA agrees that there are new statutory reporting requirements that may increase costs to SBIR and STTR awardees, although SBA intends to try to defray costs by creating a system that does not require a small business to input the same data more than once. SBA addressed these costs in the Paperwork Reduction Act (PRA) information collection it submitted with the SBIR and STTR Policy Directives.

Executive Order 13563

The SBIR/STTR Reauthorization Act of 2011 imposes a specific statutory deadline by which SBA must issue a proposed and a final regulation. Specifically, SBA was required to issue a proposed rule by April 29, 2012. Given the time needed to comply with various administrative rulemaking requirements, it was not practicable for SBA to hold public forums prior to issuing a proposed rule, as the executive order recommends, and still be able to meet the April 29th statutory deadline. However, SBA held public forums (*e.g.,* town hall meetings, webinars) once it issued the proposed rule to afford the public an opportunity to participate in the rulemaking process as envisioned by this executive order. SBA had also provided for a 60-day comment period and requested comments on not just the entire rule, but specific parts of the rule where SBA considered several alternatives or options for implementation. SBA received over 250 comments on the rule.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this final rule 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. Therefore, SBA has determined that this final rule has no federalism implications warranting preparation of a federal assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that this final rule will impose new reporting or recordkeeping requirements. For example, business concerns that are majority-owned by multiple VCOCs, hedge funds or private equity firms must register their status in a database, as the statute requires. However, because the detailed procedures for meeting this requirement are outlined in the SBIR Policy Directive, and not the rule, SBA submitted the information collection to OMB when the Policy Directives were submitted for review.

Executive Order 13272

Pursuant to Executive Order 13272 and the Small Business Jobs Act of 2010, Federal agencies issuing final rules are required to discuss and give every appropriate consideration to comments received from the SBA's Office of Advocacy to the proposed rule. The Office of Advocacy submitted a comment letter in response to the proposed rule. In the letter, the Office of Advocacy made three recommendations for SBA to consider when drafting the final rule.

First, the Office of Advocacy asked that SBA give full consideration to reviewing the comments of the stakeholders regarding the time at which a small business concern must self-certify its status. SBA had proposed that a small business self-certify its status at the time it submits its proposal and at the time of award. As discussed above in the preamble, SBA reviewed all the comments submitted and in this final rule has retained the current requirement that all SBIR/STTR

awardees must self-certify their eligibility only at the time of award. Therefore, SBA did not adopt its proposed rule on this issue.

Second, the Office of Advocacy stated that SBA should consider allowing only the prospective offerors, among others, to file a size protest. As discussed in the preamble above, SBA amended § 121.1001(a)(4) to clarify that offerors, SBA, or the funding agreement officer may initiate a size protest or request a formal size determination. SBA's proposed rule had stated that prospective or current offerors could file a size protest. However, it was not clear who or what a prospective offeror would be, but it is clear who an actual offeror is—it is someone that actually submitted an offer or application in response to an SBIR/STTR solicitation.

Third, the Office of Advocacy recommended that SBA give full consideration to the comments of the stakeholders regarding the proposed definition of domestic business concern and its potential impact on the SBIR program. As discussed in detail in the preamble, the majority of comments received on this rule concerned the ownership and control requirements proposed and SBA's proposed definition of the term domestic business concern. In reviewing these comments and the concerns expressed by the respondents, SBA has issued a final rule that restricts foreign ownership in SBIR and STTR awardees and has therefore removed as unnecessary the definition of domestic business concern.

Regulatory Flexibility Act, 5 U.S.C., 601–612

SBA has determined that this final rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* SBA addressed the impact of this final rule in its Initial Regulatory Flexibility Analysis (IRFA), which was part of the proposed rule. SBA received one comment that agreed with SBA's analysis and believed that the rule will be helpful to small biotechnology companies, which typically employ fewer than 50 individuals but together employ over 1.6 million people. SBA also received a comment from the SBA Office of Advocacy. The Office of Advocacy's comments are addressed below.

1. What are the reasons for, and objectives of, this final rule?

This regulatory action implements several sections of the SBIR/STTR Reauthorization Act. These sections of the SBIR/STTR Reauthorization Act address affiliation, ownership and control of SBIR and STTR program participants.

The objective of the final rule is to implement these statutory changes by further defining terms and expanding on the concepts set forth in the SBIR/STTR Reauthorization Act.

2. What is the legal basis for this final rule?

The legal basis for this final rule is the National Defense Authorization Act for Fiscal Year 2012, Section 5001, Division E (cited as the SBIR/STTR Reauthorization Act of 2011 or Reauthorization Act), Public Law 112–81.

3. What is SBA's description and estimate of the number of small entities to which the final rule will apply?

In FY 2009, for the SBIR program, agencies received 22,444 Phase I proposals and 3,352 Phase II proposals. In FY 2009, for the STTR program, agencies received 2,804 Phase I proposals and 467 Phase II proposals. Some of the proposals submitted were by the same small business. However, using these numbers, SBA estimates that approximately 24,000 businesses could be impacted by this proposed rule. This includes those businesses that are currently not eligible under SBA's existing regulations and will become eligible as a result of implementation of the SBIR/STTR Reauthorization Act. SBA did not receive any comments on the estimated number of businesses that could be impacted by the rule.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance requirements?

The proposed rule provided that businesses will need to represent their size status at the time of initial offer and award. However, based upon the comments received, SBA has issued a final rule stating that businesses will represent their size status at the time of award only. If there is a size protest, the small business will need to ensure it has business records that verify their small business status. These are the same documents that a business would keep in the normal course of its activities (stock certificates, by-laws etc.).

SBA explained in the proposed rule that there is a new reporting requirement for those businesses that are majority-owned by multiple VCOCs, hedge funds or private equity firms. However, SBA addressed that reporting requirement and the database used for the reporting, when it amended the SBIR policy directive (*see* 77 FR 46806 (SBIR Policy Directive), 77 FR 46855 (STTR Policy Directive)).

5. What relevant federal rules may duplicate, overlap, or conflict with this rule?

This does not conflict with current provisions in SBA's SBIR and STTR Policy Directives.

6. What significant alternatives did SBA consider that accomplish the stated objectives and minimize any significant economic impact on small entities?

The alternatives SBA considered were those set forth in the comments received on the proposed rule and discussed in the preamble.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Loan programs-business, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 638, 662, and 694a(9).

■ 2. Amend § 121.103 as follows:
■ a. Add a new paragraph (a)(7); and
■ b. Add a new paragraph (b)(8).

§ 121.103 How does SBA determine affiliation?

(a) * * *

(7) For SBA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, the bases for affiliation are set forth in § 121.702.

(b) * * *

(8) These exceptions to affiliation and any others set forth in § 121.702 apply for purposes of SBA's SBIR and STTR programs.

* * * * *

■ 3. Amend § 121.201 by revising paragraph (b) of footnote 11 at the end of the table ''Small Business Size Standards by NAICS Industry,'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

Small Business Size Standards by NAICS Industry

* * * * *

Footnotes

* * * * *

11. * * *

(b) For purposes of the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) Programs only, a different definition has been established by law. *See* § 121.702 of these regulations.

* * * * *

■ 4. Revise the undesignated center heading immediately preceding § 121.701 to read as follows:

Size and Eligibility Requirements for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

■ 5. Revise § 121.701 to read as follows:

§ 121.701 What SBIR and STTR programs are subject to size and eligibility determinations and what definitions are important?

(a) These sections apply to SBA's SBIR and STTR programs, 15 U.S.C. 638.

(b) *Definitions.*

(1) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(2) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the purposes of the SBIR or STTR program.

(3) *Hedge fund* has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The hedge fund must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(4) *Portfolio company* means any company that is owned in whole or part by a venture capital operating company, hedge fund, or private equity firm.

(5) *Private equity firm* has the meaning given the term ''private equity fund'' in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)). The private equity firm must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

(6) *Venture capital operating company* means an entity described in § 121.103(b)(5)(i), (v), or (vi). The venture capital operating company must have a place of business located in the United States and be created or organized in the United States, or under the law of the United States or of any State.

■ 6. Revise § 121.702 to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

To be eligible for award of funding agreements in SBA's SBIR and STTR programs, a business concern must meet the requirements below at the time of award of an SBIR or STTR Phase I or Phase II funding agreement:

(a) *Ownership and control for the SBIR program.*

(1) An SBIR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these;

(ii) Be a concern which is more than 50% owned by multiple venture capital operating companies, hedge funds, private equity firms, or any combination of these (for agencies electing to use the authority in 15 U.S.C. 638(dd)(1)); or

(iii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (a)(1)(i) or (a)(1)(ii) of this section. A joint venture that includes one or more concerns that meet the requirements of paragraph (a)(1)(ii) of this section must comply with § 121.705(b) concerning registration and proposal requirements.

(2) No single venture capital operating company, hedge fund, or private equity firm may own more than 50% of the concern.

(3) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(4) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(b) *Ownership and control for the STTR program.*

(1) An STTR awardee must:

(i) Be a concern which is more than 50% directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the United States), other business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the United States), or any combination of these; or

(ii) Be a joint venture in which each entity to the joint venture must meet the requirements set forth in paragraph (b)(1)(i) of this section.

(2) If an Employee Stock Ownership Plan owns all or part of the concern, each stock trustee and plan member is considered an owner.

(3) If a trust owns all or part of the concern, each trustee and trust beneficiary is considered an owner.

(c) *Size and affiliation.* An SBIR or STTR awardee, together with its affiliates, must not have more than 500 employees. 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. For the purposes of the SBIR and STTR programs, the following bases of affiliation apply:

(1) *Affiliation based on ownership.* For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. However, SBA may find a concern an affiliate of an individual, concern, or entity that owns or has the power to control 40% or more of the voting equity based upon the totality of circumstances. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors to be in control of the concern.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge.* In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(i) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered ''agreements in principle'' and are thus not given present effect.

(ii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iii) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(3) *Affiliation based on common management.* Affiliation arises where the CEO or President of a concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern, or entity that controls the board of directors of one concern also controls the board of directors or management of one or more other concerns.

(4) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons (including any individual, concern or other entity) with an identity of interest. An individual, concern or entity may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

(i) SBA may presume an identity of interest between family members with identical or substantially identical business or economic interests (such as where the family members operate concerns in the same or similar industry in the same geographic area).

(ii) SBA may presume an identity of interest based upon economic dependence if the SBIR/STTR awardee relies upon another concern or entity for 70% or more of its receipts.

(iii) An SBIR or STTR awardee is not affiliated with a portfolio company of a venture capital operating company, hedge fund, or private equity firm, solely on the basis of one or more shared investors, though affiliation may be found for other reasons.

(5) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former or current officers, directors, principal stockholders, managing members, general partners, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, general partners, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A ''key employee'' is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. A concern will be considered ''new'' for the purpose of this rule if it has been actively operating continuously for less than one year.

(6) *Affiliation based on joint ventures.* Concerns submitting an application as a joint venture are affiliated with each other with regard to the application. SBA will apply the joint venture affiliation exception at § 121.103(h)(3)(iii) for two firms approved to be a mentor and protégé under SBA's 8(a) program.

(7) *Affiliation based on the ostensible subcontractor rule.* A concern and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor or subgrantee that performs primary and vital requirements of a funding agreement (*i.e.,* those requirements associated with the principal purpose of the funding agreement), or a subcontractor or subgrantee upon which the concern is unusually reliant. All aspects of the relationship between the concern and subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the concern and subcontractor or subgrantee (such as bonding assistance or the teaming agreement). To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will consider whether the concern's proposal complies with the performance requirements of the SBIR or STTR program.

(8) *Affiliation based on license agreements.* SBA will consider whether there is a license agreement concerning a product or trademark which is critical to operation of the licensee. The license agreement will not cause the licensor to be affiliated with the licensee if the licensee has the right to profit from its efforts and bears the risk of loss. Affiliation may arise, however, through other means, such as common ownership or common management.

(9) *Exception to affiliation for portfolio companies.* If a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an awardee is a minority investor in the awardee, the awardee is not affiliated with a portfolio company of the venture capital operating company, hedge fund, or private equity firm, unless:

(i) The venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or

(ii) The venture capital operating company, hedge fund, or private equity firms holds a majority of the seats of the board of directors of the portfolio company.

(10) *Totality of the circumstances.* In determining whether affiliation exists, SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(d) *Calculating ownership and control.* SBA will review the small business' equity ownership on a fully diluted basis for purposes of determining ownership, control and affiliation in the SBIR and STTR programs. This means that SBA will consider the total number of shares or equity that would be outstanding if all possible sources of conversion were exercised, including, but not limited to: Outstanding common stock or equity, outstanding preferred stock (on a converted to common basis) or equity, outstanding warrants (on an as exercised and converted to common basis), outstanding options and options reserved for future grants, and any other convertible securities on an as converted to common basis.

■ 7. Revise § 121.704 to read as follows:

§ 121.704 When does SBA determine the size and eligibility status of a business concern?

(a) The size and eligibility status of a concern for the purpose of a funding agreement award under the SBIR and STTR programs is determined at the time of award for both Phase I and Phase II SBIR and STTR awards, or on the date of the request for a size determination, if an award is pending.

(b) A concern that qualified as a small business at the time it receives an SBIR or STTR funding agreement is considered a small business throughout the life of that specific funding agreement. Where a concern grows to be other than small, the funding agreement agency may exercise the options on the award that is a contract, grant or cooperative agreement or issue a continuation on a grant or cooperative agreement and still count the award as an award to a small business under the SBIR or STTR program. However, the following exceptions apply:

(1) In the case of a merger or acquisition, the awardee must, within 30 days of the transaction becoming final (or the approved funding agreement novation if a novation is required), recertify its small business size status to the funding agreement agency or inform the funding agreement agency that it is other than small. If the awardee is other than small, the agency can no longer fund the options or issue a continuation pursuant to the funding

agreement, from that point forward, with SBIR or STTR funds. Funding agreement novations for reasons other than a merger or acquisition do not necessarily require re-certification. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(2) For the purposes of SBIR and STTR funding agreements with durations of more than five years, a funding agreement officer must request that a business concern re-certify its small business size status no more than 120 days prior to the end of the fifth year of the funding agreement, and no more than 120 days prior to exercising any option or issuing any continuation. If the awardee certifies that it is other than small, the funding agreement agency can no longer fund the options or issue a continuation pursuant to the funding agreement with SBIR or STTR funds. The funding agreement agency and the awardee must immediately revise all applicable Federal contract and grant databases to reflect the new size status from that point forward.

(c) Re-certification does not change the terms and conditions of the funding agreement. The requirements in effect at the time of award remain in effect throughout the life of the funding agreement.

(d) A request for a size re-certification shall include the size standard in effect at the time of re-certification.

■ 8. Revise § 121.705 to read as follows:

§ 121.705 Must a business concern self-certify its size and eligibility status?

(a) A business concern must self-certify that it meets the eligibility requirements set forth in § 121.702 for a Phase I or Phase II SBIR or STTR funding agreement.

(b) A business concern that is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms and a joint venture where one or more parties to the joint venture is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms must be registered with SBA as of the date it submits its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation. The concern must indicate in any SBIR proposal or application that it is registered with SBA as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(c) A small business concern that did not meet the requirements of paragraph (b) of this section at the time of its SBIR proposal or application must notify the funding agreement officer if, on the date of award, the concern is more than 50% owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(1) The concern is still eligible to receive the award if it becomes majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms after the time it submitted its initial proposal (or other formal response) to a Phase I or Phase II SBIR announcement or solicitation if the agency makes the award on or after the date that is 9 months from the end of the period for submitting applications under the SBIR solicitation.

(2) This small business, known as a covered small business concern, would have to certify that it meets the requirements of the SBIR program set forth in §§ 121.702(a)(1)(ii) or 121.702(a)(1)(iii), and 121.702(a)(2) and 121.702(c) at the time of award of the funding agreement.

(d) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest or other credible information which would cause the funding agreement officer or SBA to question the size or eligibility of the concern.

(e) Procedures for protesting an awardee's self-certification are set forth in §§ 121.1001 through 121.1009. In adjudicating a protest, SBA may address both the size status and eligibility of the SBIR or STTR awardee.

■ 9. Amend § 121.1001 by revising paragraph (a)(4) as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(4) For SBA's Small Business Innovation Research (SBIR) program and Small Business Technology Transfer (STTR) program, the following entities may protest:

(i) An offeror or applicant for that solicitation;

(ii) The funding agreement officer; and

(iii) The responsible SBA Government Contracting Area Director; the Director, Office of Government Contracting; or the Associate Administrator, Investment Division.

* * * * *

■ 10. Amend § 121.1004 by revising paragraph (b) as follows:

§ 121.1004 What time limits apply to size protests?

* * * * *

(b) *Protests by contracting officers, funding agreement officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers, funding agreement officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section, including for purposes of the SBIR and STTR programs. Notwithstanding paragraph (e), for purposes of the SBIR and STTR programs the funding agreement officer or SBA may file a protest in anticipation of an award.

* * * * *

■ 11. Amend § 121.1008 by revising paragraph (a) to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the D/HUB of the protest. If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. If the protest pertains to a requirement involving SBA's SBIR or STTR programs, the Area Director will also notify the Associate Administrator, Investment Division. If the protest involves the size status of an SDB concern (see part 124, subpart B of this chapter) the Area Director will notify SBA's Associate Administrator for Business Development. If the protest pertains to a requirement that has been reserved for competition among eligible 8(a) BD program participants, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

* * * * *

Dated: December 18, 2012

Karen G. Mills,

Administrator.

[FR Doc. 2012–30809 Filed 12–26–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0995; Directorate Identifier 2012–NM–056–AD; Amendment 39–17291; AD 2012–25–10]

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 all Airbus Model A330–300 series airplanes and Model A340–200 and –300 series airplanes. This AD was prompted by reports that, during a flight test, several spoiler servo-controls (SSCs) did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. Loss of that locking function—which is ensured by a blocking valve—was caused by an internal leak from a sheared seal on the blocking valve. This AD requires inspecting to determine if certain SSCs are installed, performing an operational test of any affected SSC, and replacing if necessary. We are issuing this AD to prevent loss of the hydraulic locking function during take-off and go-around phases, which, in combination with malfunction of one engine, could result in reduced controllability of the airplane.

DATES: This AD becomes effective January 31, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 31, 2013.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 20, 2012 (77 FR 58327). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Two operators have reported that several spoilers did not remain locked in the retracted position (lifted up without order) after manual depressurization of the corresponding hydraulic circuit during flight test.
>
> Subsequent checks on ground confirmed that, for each affected spoiler surface, the spoiler was fitted with one MZ-type Spoiler Servo Control (SSC) (Part Number (P/N) MZ4339390–12 or P/N MZ4306000–12).
>
> The results of the investigations on the affected SSCs, done by the supplier, revealed that the loss of the hydraulic locking function—which is ensured by a blocking valve—was due to an internal leakage caused by a sheared seal. This seal is installed at the left end of the blocking valve.
>
> During the on-wing modification of the maintenance cover, blocking valve movement may have damaged the seal on the outer diameter of the blocking valve assembly, causing the loss of the hydraulic locking function.
>
> This condition, if not detected and corrected, if occurring during take-off and go-around phases in combination with one engine inoperative, could jeopardize the aeroplane safe flight.
>
> For the reasons described above, this [EASA] AD requires the identification of the installed SSCs, to perform an operational test of the hydraulic locking function of the affected SSCs and to accomplish the applicable corrective actions if any discrepancy is detected during the operational test. This [EASA] AD also requires reporting operational test results to Airbus.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 58327, September 20, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 61 products of U.S. registry. We also estimate that it will take up to 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $36,295, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 36 work-hours and require parts costing $34,928, for a cost of $37,988 per affected SSC. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 58327, September 20, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–25–10 Airbus: Amendment 39–17291. Docket No. FAA–2012–0995; Directorate Identifier 2012–NM–056–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 31, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A330–301, –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.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

(e) Reason

This AD was prompted by reports that, during flight test, several spoiler servo-controls (SSCs) did not remain locked in the retracted position (hydraulic locking function) after manual depressurization of the corresponding hydraulic circuit. Loss of that locking function—which is ensured by a blocking valve—was caused by an internal leak from a sheared seal on the blocking valve. We are issuing this AD to prevent loss of the hydraulic locking function during take-off and go-around phases, which, in combination with malfunction of one engine, could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Actions

Within 90 days after the effective date of this AD: Inspect to determine the part number (P/N) of all SSCs installed, in accordance with Airbus All Operators Telex (AOT) A330–27A3185 (for Model A330–300 series airplanes) or A340–27A4181 (for Model A340–200 and –300 series airplanes), both dated January 4, 2012. A review of airplane maintenance records is acceptable in lieu of the inspection to identify the part number of the SSC installed, provided that part number can be conclusively determined from that review.

(1) For any SSC having P/N MZ4339390–12 or P/N MZ4306000–12 (MZ-type): Within 90 days after identification of the part, perform an operational test of the hydraulic locking function at each position fitted with an MZ-type SSC, in accordance with Airbus AOT A330–27A3185 (for Model A330–300 series airplanes) or A340–27A4181 (for Model A340–200 and –300 series airplanes), both dated January 4, 2012.

(2) If any discrepancy is detected during the operational test specified in paragraph (g)(1) of this AD, or if the test fails, before further flight, replace the affected SSC with a new or serviceable SSC, in accordance with Airbus AOT A330–27A3185 (for Model A330–300 series airplanes) or A340–27A4181 (for Model A340–200 and –300 series airplanes), both dated January 4, 2012.

(h) Reporting to Airbus

Submit a report of the findings of the operational test required by paragraph (g)(1) of this AD (both positive and negative) to Airbus, Customer Services, Engineering and Technical Support, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: Daniel Lopez-Fernandez, SEEL6; fax: (+33) 5 61 93 04 52; email: *daniel.lopez-fernandez@airbus.com;* at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) If the test was done on or after the effective date of this AD: Submit the report within 30 days after the test.

(2) If the test was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(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.

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

(j) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0009, dated January 13, 2012, and the service information specified in paragraph (j)(1) or (j)(2) of this AD, for related information.

(1) Airbus All Operators Telex (AOT) A330–27A3185, dated January 4, 2012.

(2) Airbus AOT A340–27A4181, dated January 4, 2012.

(k) Material Incorporated by Reference

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

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

(i) Airbus All Operators Telex A330–27A3185, dated January 4, 2012. The document number and issue date are identified on only the first page of this document.

(ii) Airbus All Operators Telex A340–27A4181, dated January 4, 2012. The document number and issue date are identified on only the first page of this document.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness

Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on December 7, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30369 Filed 12–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1222; Directorate Identifier 2010–NM–268–AD; Amendment 39–17286; AD 2012–25–05]

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 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by reports of escape slides failing to deploy from the forward and aft right-hand doors during scheduled maintenance slide deployments. This AD requires modifying the escape slide. Also, for certain airplanes, this AD requires modifying or replacing the Vespel piston. For certain other airplanes, this AD requires an additional modification of the escape slide. We are issuing this AD to prevent failure of an escape slide to deploy, which could result in the slide being unusable during an emergency evacuation and increased likelihood of injury to passengers or crewmembers due to the difficulty in evacuating the airplane.

DATES: This AD is effective January 31, 2013.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of January 31, 2013.

ADDRESSES: For service information identified in this AD, Goodrich Corporation, Aircraft Interior Products ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; phone: 602–243–2270; Internet: *http://www.goodrich.com/TechPubs.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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: Sarah Piccola, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on August 31, 2012 (77 FR 53155). The original NPRM (76 FR 69159, November 8, 2011) proposed to require checking the escape slide girt for serviceability, and replacement if necessary; modifying the cable routing provision; replacing the regulator padding; modifying the aspirator orientation; and modifying the valise. The original NPRM also proposed to require, for certain airplanes, modifying or replacing the Vespel piston, modifying the pilot valve regulator, installing a new firing cable and safety pin, and modifying the slide valise. The SNPRM proposed to add airplanes to the applicability of the original NPRM, and specify revised service information. For certain other airplanes, this AD requires an additional modification of the escape slide.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Support for the SNPRM (77 FR 53155, August 31, 2012)

Boeing stated that it concurs with the contents of the SNPRM (77 FR 53155, August 31, 2012), and therefore, no additional comments will be forthcoming.

Goodrich Corporation stated that the comments it submitted to the original NPRM (76 FR 69159, November 8, 2011) have been satisfactorily addressed, and therefore, it has no additional comments or changes to offer.

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–except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (77 FR 53155, August 31, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 53155, August 31, 2012).

Additional Change Made to This Final Rule

We have removed the girt replacement on-condition cost specified in the SNPRM (77 FR 53155, August 31, 2012) from this AD, because the proposed girt check for continued serviceability was removed from the SNPRM and is not included in this AD.

Costs of Compliance

We estimate that this AD affects 557 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
Modify girt and valise, and replace padding.	2 work-hours × $85 per hour = $170.	$223	$393	$218,901.
Modify regulator valve, install cable and pin, and modify slide valise.	1 work-hour × $85 per hour = $85.	Between $1,749 and $1,836.	Between $1,834 and $1,921.	Between $1,021,538 and $1,069,997.
Modify Vespel piston	1 work-hour × $85 per hour = $85.	$0	$85	$47,345.
Optional Vespel piston replacement.	Up to 1 work-hour × $85 per hour = $85.	Up to $612	Up to $697	Up to $388,229.

According to the parts supplier, 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):

2012–25–05 The Boeing Company: Amendment 39–17286; Docket No. FAA–2011–1222; Directorate Identifier 2010–NM–268–AD.

(a) Effective Date

This AD is effective January 31, 2013.

(b) Affected ADs

This AD affects AD 2008–24–08, Amendment 39–15748 (73 FR 72320, November 28, 2008).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, with Goodrich Corporation door escape slide part number (P/N) 5A3307–1, –3, –5, or –301, serial numbers (S/N) BNG0001 through BNG14499 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of escape slides failing to deploy from the forward and aft right-hand doors during scheduled maintenance slide deployments. We are issuing this AD to prevent failure of an escape slide to deploy, which could result in the slide being unusable during an emergency evacuation and increased likelihood of injury to passengers or crewmembers due to the difficulty in evacuating the airplane.

(f) Compliance

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

(g) Slide Modification

Within 36 months after the effective date of this AD: Modify the escape slide, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 5A3307–25–389, Revision 2, dated May 4, 2012.

(h) Concurrent Requirements

(1) For slide P/N 5A3307–301: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, modify the escape slide, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 5A3307–25–339, Revision 5, dated May 4, 2012.

(2) For slide P/N 5A3307–301 or 5A3307–5: Prior to or concurrently with accomplishing the actions required by paragraph (g) of this AD, modify the Vespel piston in the regulator valves, or replace the Vespel piston with a new or serviceable Vespel piston P/N 3A3566–2 or 3A3832–2, as applicable, in accordance with the Accomplishment Instructions of Goodrich Service Bulletin 25–349, Revision 1, dated January 11, 2010.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using the service bulletins specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this AD, which are not incorporated by reference in this AD.

(i) Goodrich Service Bulletin 5A3307–25–339, Revision 1, dated September 26, 2003.

(ii) Goodrich Service Bulletin 5A3307–25–339, Revision 2, dated March 31, 2004.

(iii) Goodrich Service Bulletin 5A3307–25–339, Revision 3, dated May 8, 2009.

(iv) Goodrich Service Bulletin 5A3307–25–339, Revision 4, dated October 1, 2011.

(2) This paragraph provides credit for the modification or replacement of the Vespel piston in the regulator valves required by paragraph (h)(2) of this AD, if those actions

were performed before the effective date of this AD using Goodrich Service Bulletin 25–349, dated September 15, 2004, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Sarah Piccola, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6483; fax: 425–917–6590; email: *sarah.piccola@faa.gov.*

(2) For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; phone: 602–243–2270; Internet: *http://www.goodrich.com/TechPubs.*

(l) Material Incorporated by Reference

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

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

(i) Goodrich Service Bulletin 25–349, Revision 1, dated January 11, 2010.

(ii) Goodrich Service Bulletin 5A3307–25–339, Revision 5, dated May 4, 2012.

(iii) Goodrich Service Bulletin 5A3307–25–389, Revision 2, dated May 4, 2012.

(3) For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; phone: 602–243–2270; Internet: *http://www.goodrich.com/TechPubs.*

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

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

Issued in Renton, Washington, on December 4, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–29999 Filed 12–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0946; Directorate Identifier 2012–CE–037–AD; Amendment 39–17294; AD 2012–18–10 R1]

RIN 2120–AA64

Airworthiness Directives; GA200 (Pty) Ltd Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for all GA200 (Pty) Ltd Models GA200 and GA200C airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the wing strut bolt through the main spar. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 31, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 14, 2012 (77 FR 55686, September 11, 2012).

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

For service information identified in this AD, contact GippsAero, P.O. Box 881, Morwell, Victoria 3840, Australia, telephone: + 61 (0) 3 5172 1200; fax + 61 (0) 3 5172 1201; email: *support@gippsaero.com;* Internet: *www.gippsaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 15, 2012 (77 FR 62466), and proposed to revise AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012).

Since we issued AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012), the Civil Aviation Safety Authority (CASA), which is the aviation authority for the Commonwealth of Australia, has issued AD AD/GA200/1, Amendment 1, dated September 21, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products.

The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> As a result of a reported case of failure of a strut on a GA200C aircraft, GippsAero has issued a mandatory service bulletin to alert operators and maintenance organisations and to provide inspection and rectification actions.
>
> This Airworthiness Directive makes this inspection and rectification action mandatory. Failure to complete the actions required by this service bulletin may result in wing strut bolt failure, resulting in wing structural failure.
>
> Amendment 1 is issued to revise the repeat inspection compliance time to 500 hours (previously 100 hours). The requirement service bulletin is also revised to provide a corrective action if the inboard (upper) strut fitting hole is found to be larger than specified. The initial inspection compliance time of 10 hours remains unchanged.

This AD retains the actions required in AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012), changes the compliance time for the repetitive inspections from intervals of 100 hours time-in-service (TIS) to intervals of 500 hours TIS, and incorporates the revised service bulletin that includes repair instructions in lieu

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 62466, October 15, 2012) 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 62466, October 15, 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 62466, October 15, 2012).

Costs of Compliance

We estimate that this AD will affect 3 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $510, or $170 per product.

In addition, we estimate that any necessary follow-on actions will take about 2 work-hours and require parts costing $400, for a cost of $570 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 62466, October 15, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–17187 (77 FR 55686, September 11, 2012) and adding the following new AD:

2012–18–10 R1 GA200 (Pty) Ltd: Amendment 39–17294; Docket No. FAA–2012–0946; Directorate Identifier 2012–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 31, 2013.

(b) Affected ADs

This AD revises AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012).

(c) Applicability

This AD applies to GA200 (Pty) Ltd Models GA200 and GA200C airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the wing strut bolt through the main spar. We are issuing this AD to prevent failure of the wing strut bolt, which could result in wing failure.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within 10 hours time-in-service (TIS) after September 14, 2012 (the effective date retained from AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012)), inspect the inboard strut fitting following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012 (which is incorporated by reference in AD 2012–18–10); or GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012. Repetitively thereafter inspect at intervals not to exceed 500 hours TIS following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012. The inspection procedures remain the same; however, the revised service bulletin provides repair instructions in lieu of contacting the manufacturer.

(2) If the 100-hour TIS repetitive inspection previously required in AD 2012–18–10, Amendment 39–17187 (77 FR 55686, September 11, 2012) has already been done before January 31, 2013 (the effective date of this AD) following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012 (which is incorporated by reference in AD 2012–18–10), the next required inspections are due at intervals not to exceed 500 hours TIS after the last inspection following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012.

(3) If any discrepancies are found during any of the inspections required by paragraphs (f)(1) and (f)(2) of this AD, before further flight after the inspection in which the discrepancy is found, take all necessary corrective actions following GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012 (which is incorporated by reference in AD 2012–18–10); or GippsAero Mandatory

Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority (CASA) AD AD/GA200/1, Amendment 1, dated September 21, 2012; GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012; and GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 31, 2013.

(i) GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 2, dated September 4, 2012.

(ii) Reserved.

(4) The following service information was approved for IBR on September 14, 2012 (77 FR 55686, September 11, 2012).

(i) GippsAero Mandatory Service Bulletin SB–GA200–2012–08, Issue 1, dated August 22, 2012.

(ii) Reserved.

(5) For GippsAero service information identified in this AD, contact GippsAero, P.O. Box 881, Morwell, Victoria 3840, Australia, telephone: + 61 (0) 3 5172 1200; fax + 61 (0) 3 5172 1201; email: *support@gippsaero.com;* Internet: *www.gippsaero.com.*

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

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

Issued in Kansas City, Missouri, on December 12, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30627 Filed 12–26–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 90

[ET Docket No. 12–338; FCC 12–140]

WRC–07 Implementation Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to correct grammatical, typographical, and display errors in the United States Table of Frequency Allocations (U.S. Table) and also remove inconsistencies between the non-Federal Table of Frequency Allocations (non-Federal Table) and parts 15 and 90 of the Commission's rules.

DATES: Effective January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, 202–418–2450, *tom.mooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, ET Docket No. 12–338, FCC 12–140, adopted November 15, 2012 and released November 19, 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 Order

1. In the Order, the Commission makes several non-substantial editorial revisions to the parts 2, 15, and 90 of the Commission's rules. The most significant of these updates are: 1) correct the cross references to Allocation Table footnotes in parts 15 and 90 of the Commission's rules; 2) update the list of grandfathered sites in the 1432–1435 MHz band; and 3) remove an unused Federal site from the list of grandfathered sites in the 3650–3700 MHz band.

2. *US117.* NTIA requested that the Commission correct the coordinates for Table Mountain Observatory in US117 by revising the latitude from 40° 07′ 50'' N to 40° 08′ 02'' N. The Commission noted that the requested change would have little or no impact on non-Federal operations because paragraph (b) of US117 states that non-Federal use of the 406.1–410 MHz band is limited to the radio astronomy service and as provided by US13 (i.e., two channels that are available for the specific purpose of transmitting hydrological and meteorological data). Accordingly, the Commission revised the coordinates of the Table Mountain Observatory in US117 as requested by NTIA.

3. *General Aviation Air-Ground Stations.* Section 22.805 lists 13 channel pairs that are allocated for the provision of radiotelephone service to airborne mobile subscribers in general aviation aircraft. The Commission amended NG12 to accurately reflect the frequency bands that may be assigned to domestic public land and mobile stations to provide a two-way air-ground public radiotelephone service per Section 22.805. Accordingly, the Commission replaced the 454.4–455 MHz and 459.4–460 MHz bands in NG12 with the more specific 454.6625–454.9875 MHz and

459.6625–459.9875 MHz bands, respectively. The Commission also takes this opportunity to renumber NG12 in frequency order as NG32.

4. *Radiolocation Use of 420–450 MHz.* The *WRC–07 Table Clean-up Order* renumbered US217 as US269, but did not update a cross reference to this footnote in § 90.103(c)(21). Accordingly, the Commission amended § 90.103 (''Radiolocation service'') by revising the cross reference in the last sentence of paragraph (c)(21) from ''US217'' to ''US269.''

5. *On-board Communications.* In 2006, the Commission added § 80.373(g)(2) to its rules to make four frequencies (457.5375 MHz, 457.5625 MHz, 467.5375 MHz, and 467.5625 MHz) available for narrowband use by on-board ship communication stations within U.S. territorial waters. An international footnote, RR 5.287, provides for on-board communication stations on these frequencies outside the territorial waters of the United States. A separate footnote, RR 5.288, makes different frequencies available for on-board communication stations within the territorial waters of the United States. RR 5.288 is incomplete because it does not include the four narrowband frequencies listed in RR 5.287 that the Commission allocated in 2006 for use by on-board communication stations in the U.S. territorial waters. To correctly show the 2006 Commission action in the Allocation Table, the Commission replaced RR 5.288 with a new U.S. footnote, which we number as US288. US288 incorporates the text from RR 5.288 and adds the four frequencies contained in RR 5.287. The Commission also added a cross reference to part 80 (Stations in the Maritime Mobile Services) to the 462.7375–467.5375 MHz and 467.5375–467.7375 MHz bands in the Allocation Table.

6. *US361.* The 1432–1435 MHz band was a Government transfer band and US361 lists 23 operating areas where Federal stations in the fixed and mobile services may operate indefinitely on a primary basis. At NTIA's request, the Commission amended US361 by correcting the name of a grandfathered site and by removing a grandfathered site. Specifically, the Commission corrected the Location name for 37° 29′ North latitude, 114° 14′ West longitude from ''Nellis AFB, NV'' to ''Nevada Test and Training Range (NTTR).'' Next, because the ''AUTEC'' location is not within the United States and its insular areas (the listed coordinates are on Andros Island in The Bahamas), it removed this location from US361. Finally, the Commission reorganized and simplified the text of US361 and renumbered this U.S. footnote in frequency order as US83.

7. *NG168.* In the *Mobile Use of MSS Bands R&O,* the Commission revised the text of NG168. It further amended the text of NG168 to make the following grammatical corrections. First, the Commission introduced the MSS abbreviation, *i.e.,* ''mobile-satellite service (MSS)'' in the first sentence and removed the introduction of the MSS abbreviation from the last sentence. Second, it made the word ''component'' plural in the first sentence. The Commission also took this opportunity to renumber NG168 in frequency order as NG43.

8. *US385.* The *WRC–07 Table Clean-up Order* added ''the current text of US269, which urges fixed and mobile except aeronautical mobile licensees in the 2655–2690 MHz band to coordinate their systems, along with the secondary allocation status of the radio astronomy service in the 2655–2690 MHz band that is shown in the U.S. Table, to US311, and renumber[ed] US311 as US385.'' However, the cross reference to US311 in § 15.242(e) was not updated at that time. Accordingly, the Commission amended the first sentence in paragraph (e) of § 15.242 by revising ''US 311'' to read ''US385.''

9. *US338.* The text of US338 applies to the 2305–2310 MHz and 2310–2320 MHz bands, but the reference to US338 is shown only in the 2305–2310 MHz band. The Commission added the missing U.S. footnote, which it renumbered in frequency order as US97, to the 2310–2320 MHz band.

10. *US348.* Primary Federal operations in the 3650–3700 MHz band are limited to three grandfathered radar sites, which are codified in US348 and in § 90.1331(b)(1). NTIA has informed us that one of these sites—Naval Station Pascagoula—has been closed. Accordingly, the Commission amended US348 and § 90.1331(b)(1) to remove the unused Federal site. It also takes this opportunity to renumber US348 in frequency order as US109.

11. *10–10.5 GHz.* With the concurrence of NTIA, the Commission amended the Federal Table by revising the ''10–10.45'' GHz band and the reference to ''G2'' to read ''10–10.5'' and ''G32,'' respectively. We also revise the text of three footnotes (US58, NG42, NG134) that pertain to the 10–10.5 GHz band. First, the Commission revised US58 by adding the existing amateur-satellite service allocation to the list of permitted non-Federal services in the 10–10.5 GHz band so that this footnote correctly lists all permitted non-Federal services, and it renumbered this footnote in frequency order as US128. Second, the Commission combined the text of NG42 and NG134 (which require that non-Federal stations in the radiolocation service not cause harmful interference to the amateur service in the 10–10.5 GHz band, and that these stations not cause harmful interference to the amateur-satellite service in the 10.45–10.5 GHz sub-band, respectively) and renumbered the new footnote in frequency order as NG50.

12. *US277 and US355.* Initially, NTIA requested that the Commission correct the coordinates for the Arecibo Observatory in US355 by approximately 68 meters (from 18° 20′ 39'' N, 66° 45′ 10'' W to 18° 20′ 37'' N, 66° 45′ 11'' W). Subsequently, NTIA requested that the Commission correct the elevations of nearly all of the radio astronomy observatories specified in US355. It noted that the requested changes are *de minimis* in nature and would affect only future non-geostationary satellite orbit systems in the fixed-satellite service (space-to-Earth). Accordingly, the Commission amended US355 by correcting the coordinates of the Arecibo Observatory and the elevations of 12 of the observatories. It also renumbered US355 in frequency order as US131 and added missing references to this footnote in the 10.6–10.68 GHz (Federal and non-Federal Tables) and 10.7–11.7 GHz bands (Federal Table). The Commission revised US277 by updating the cross reference from US355 to US131. Finally, the Commission renumbered US277 as US130, which places the allocation in US130 adjacent to the list of radio astronomy observatories in US131.

13. *G27 and G117.* At NTIA's request, the Commission amended the text of two Federal Government footnotes in § 2.106 of our rules. First, it amended G27 by revising ''255'' to read ''225.'' Second, the Commission amended G117 by replacing the ''17.3–17.7 GHz'' and ''17.8–21.2 GHz'' band entries with ''17.375–17.475 GHz'' and ''17.6–21.2 GHz.'' This action updates G117 by listing the sub-bands that are specified in US402 (17.375–17.475 GHz and 17.6–17.7 GHz) and by restricting Federal fixed-satellite service use of the 17.7–17.8 GHz band (which is authorized in US401) to military systems.

14. *Allocation Display Changes.* In the U.S. Table, the Commission generally does not subdivide a frequency band unless it is necessary to do so, *e.g.,* when we are adding a radio service in only a segment of an existing frequency band. In the non-Federal Table, the only difference between the 19.7–20.1 GHz and 20.1–20.2 GHz bands is RR 5.529, and the only differences between the 29.5–29.9 GHz and 29.9–30 GHz bands

are RR 5.529 and RR 5.543. Accordingly, the Commission merged these bands to form the 19.7–20.2 GHz and 29.5–30 GHz bands.

Paperwork Reduction Act

15. This *Order* contains no new or modified information collection requirements 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).

Congressional Review Act

16. The Commission will send a copy of this *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

17. Pursuant to sections 1, 4, 301, 302(a), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), and 303, and section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), this *order* is hereby *adopted* and the Commission's rules *are amended* as set forth in the Final rules.

18. The rule amendments adopted herein *shall become effective* January 28, 2013.

19. *It is further ordered* that the Commission *shall send* a copy of this *Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 2, 15, and 90

Spectrum, International telecommunications.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, and 90 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended to read as follows.

■ a. Pages 27–28, 32, 36–37, 40, 47, 51–52, and 54 are revised.

■ b. In the list of United States (US) Footnotes, footnotes US83, US97, US109, US128, US130, US131, and US288 are added; footnotes US58, US277, US338, US348, US355, and US361 are removed; and footnote US117 is revised.

■ c. In the list of non-Federal Government (NG) Footnotes, footnotes NG32, NG43, and NG50 are added; and footnotes NG12, NG42, NG134, and NG168 are removed.

■ d. In the list of Federal Government (G) Footnotes, footnotes G27 and G117 are revised.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

* * * * *

BILLING CODE 6712–01–P

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED MOBILE SPACE RESEARCH (space-to-space) 5.268 US13 US64 G5	410-420 US13 US64	Private Land Mobile (90) MedRadio (95I)
420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION G2 G129 5.286 US64 US87 US230 US269 US270 US397 G8	420-450 Amateur US270 5.282 5.286 US64 US87 US230 US269 US397	Private Land Mobile (90) MedRadio (95I) Amateur Radio (97)
430-432 AMATEUR RADIOLOCATION 5.271 5.272 5.273 5.274 5.275 5.276 5.277	430-432 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279				
432-438 AMATEUR RADIOLOCATION Earth exploration-satellite (active) 5.279A 5.138 5.271 5.272 5.276 5.277 5.280 5.281 5.282	432-438 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.279A 5.271 5.276 5.277 5.278 5.279 5.281 5.282				
438-440 AMATEUR RADIOLOCATION 5.271 5.273 5.274 5.275 5.276 5.277 5.283	438-440 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279				
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286					
450-455 FIXED MOBILE 5.286AA 5.209 5.271 5.286 5.286A 5.286B 5.286C 5.286D 5.286E			450-454 5.286 US64 US87	450-454 LAND MOBILE 5.286 US64 US87 NG112 NG124	Remote Pickup (74D) Low Power Auxiliary (74H) Private Land Mobile (90) MedRadio (95I)
			454-456	454-455 FIXED LAND MOBILE US64 NG32 NG112 NG148	Public Mobile (22) Maritime (80) MedRadio (95I)
455-456 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	455-456 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	455-456 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	US64	455-456 LAND MOBILE US64	Remote Pickup (74D) Low Power Auxiliary (74H) MedRadio (95I)

456-459 FIXED MOBILE 5.286AA 5.271 5.287 5.288			456-459 5.287 US64 US288	456-460 FIXED LAND MOBILE 5.287 US64 US288 NG32 NG112 NG124 NG148	Public Mobile (22) Maritime (80) Private Land Mobile (90) MedRadio (95I)
459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460		
460-470 FIXED MOBILE 5.286AA Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 5.290			460-470 Meteorological-satellite (space-to-Earth) 5.287 5.289 US73 US201 US209 US288	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 US73 US201 US209 US288 NG124	Maritime (80) Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201 US288	Maritime (80) Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE 5.289 US73 US201 US288 NG124	Maritime (80) Private Land Mobile (90)
470-790 BROADCASTING 5.149 5.291A 5.294 5.296 5.300 5.302 5.304 5.306 5.311A 5.312	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-512 FIXED LAND MOBILE BROADCASTING NG5 NG14 NG66 NG115 NG149	Public Mobile (22) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307		512-608 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical Mobile-satellite (Earth-to-space)		608-614 LAND MOBILE (medical telemetry and medical telecommand) RADIO ASTRONOMY US74 US246		Personal Radio (95)
	614-698 BROADCASTING Fixed Mobile 5.293 5.309 5.311A	610-890 FIXED MOBILE 5.313A 5.317A BROADCASTING 5.149 5.305 5.306 5.307 5.311A 5.320	614-698	614-698 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)

5.149 5.338 5.338A 5.339	5.149 5.334 5.339	1390-1395 5.339 US37 US342 US385 US398	1390-1392 FIXED MOBILE except aeronautical mobile Fixed-satellite (Earth-to-space) US368 5.339 US37 US342 US385 US398 1392-1395 FIXED MOBILE except aeronautical mobile 5.339 US37 US342 US385 US398	Wireless Communications (27)
		1395-1400 LAND MOBILE (medical telemetry and medical telecommand) 5.339 US37 US342 US385 US398		Personal Radio (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile 5.338A 5.341		1427-1429.5 LAND MOBILE (medical telemetry and medical telecommand) US350 5.341 US37 US398	1427-1429.5 LAND MOBILE (telemetry and telecommand) Fixed (telemetry) 5.341 US37 US350 US398	Private Land Mobile (90) Personal Radio (95)
1429-1452 FIXED MOBILE except aeronautical mobile 5.338A 5.341 5.342	1429-1452 FIXED MOBILE 5.343 5.338A 5.341	1429.5-1432 5.341 US37 US350 US398	1429.5-1430 FIXED (telemetry and telecommand) LAND MOBILE (telemetry and telecommand) 5.341 US37 US350 US398 1430-1432 FIXED (telemetry and telecommand) LAND MOBILE (telemetry and telecommand) Fixed-satellite (space-to-Earth) US368 5.341 US37 US350 US398	
		1432-1435 5.341 US83	1432-1435 FIXED MOBILE except aeronautical mobile 5.341 US83	Wireless Communications (27)
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 BROADCASTING-SATELLITE 5.208B 5.345 5.341 5.342	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 BROADCASTING-SATELLITE 5.208B 5.345 5.341 5.344	1435-1525 MOBILE (aeronautical telemetry) 5.341 US78		Aviation (87)

1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F			1980-2025	NG177	
				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 US393	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG153 NG178	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) NG43	Satellite Communications (25)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	2200-2290 US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122	2300-2305 Amateur	Amateur Radio (97)
			2305-2310 US97 G122	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US97	Wireless Communications (27) Amateur Radio (97)
			2310-2320 Fixed Mobile US339 Radiolocation G2 US97 US327	2310-2320 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US97 US327	Wireless Communications (27) Aviation (87)
			2320-2345 Fixed Radiolocation G2 US327	2320-2345 BROADCASTING-SATELLITE 5.396 US327	Satellite Communications (25)
			2345-2360 Fixed Mobile US339 Radiolocation G2 US327	2345-2360 FIXED MOBILE US339 BROADCASTING-SATELLITE RADIOLOCATION 5.396 US327	Wireless Communications (27) Aviation (87)
			2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed US101	2360-2390 MOBILE US276 US101	Aviation (87) Personal Radio (95)

3300-3400 RADIOLOCATION 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G2 US342	3300-3500 Amateur Radiolocation US108 5.282 US342	Private Land Mobile (90) Amateur Radio (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile 5.430A Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile 5.431A Radiolocation 5.433 5.282	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile 5.432B Radiolocation 5.433 5.282 5.432 5.432A			
	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433	3500-3600 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.433A Radiolocation 5.433	3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110	3500-3600 Radiolocation	Private Land Mobile (90)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile		3600-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433 5.435	US245	3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation	Satellite Communications (25) Private Land Mobile (90)
			3650-3700 US109 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US109 US349	
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG180	Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION US261		Aviation (87)
4400-4500 FIXED MOBILE 5.440A			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE 5.440A			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.440A 5.442 Radio astronomy 5.149 5.339 5.443			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
			4940-4990 5.339 US342 US385 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US342 US385	Public Safety Land Mobile (90Y)

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.5 RADIOLOCATION US108 G32 5.479 US128	10-10.45 Amateur Radiolocation US108 5.479 US128 NG50	Private Land Mobile (90) Amateur Radio (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481				10.45-10.5 Amateur Amateur-satellite Radiolocation US108 US128 NG50	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482 5.482A			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US130 US131 US265	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US265 SPACE RESEARCH (passive) US130 US131	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US131 US246		
10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US131 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US131 US211 NG104 NG182 NG186	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 Mobile except aeronautical mobile 5.485 12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.488 5.485 5.489	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.492 5.487 5.487A	11.7-12.2	11.7-12.2 FIXED-SATELLITE (space-to-Earth) 5.485 5.488 NG143 NG183 NG187 NG184	Satellite Communications (25)

Table of Frequency Allocations — 17.7-23.6 GHz (SHF) — Page 51

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) 5.517 (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.515	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 US401 G117	17.7-17.8 FIXED NG144 FIXED-SATELLITE (Earth-to-space) US271 US401	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE 5.519		17.8-18.3 FIXED-SATELLITE (space-to-Earth) US334 G117 US519	17.8-18.3 FIXED NG144 US334 US519	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B (Earth-to-space) 5.520 MOBILE 5.519 5.521			18.3-18.6 FIXED-SATELLITE (space-to-Earth) US334 G117	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE					
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 US334 G117 SPACE RESEARCH (passive) US254	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.516B 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) US334 G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED NG144 FIXED-SATELLITE (space-to-Earth) NG166 US334	Satellite Communications (25) TV Broadc't Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B Mobile-satellite (space-to-Earth) 5.524		19.7-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25)

20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.516B MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528				5.525 5.526 5.527 5.528 5.529 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.208B 5.530 5.531	21.4-22 FIXED MOBILE		
22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US263 US342		
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		
22.55-23.55 FIXED INTER-SATELLITE 5.338A MOBILE 5.149			22.55-23.55 FIXED INTER-SATELLITE US278 MOBILE US342		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)

25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536B FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) 5.536C Standard frequency and time signal-satellite (Earth-to-space) 5.536A			25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED INTER-SATELLITE 5.536 MOBILE SPACE RESEARCH (space-to-Earth) Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	25.5-27 Inter-satellite 5.536 Standard frequency and time signal-satellite (Earth-to-space) 5.536A US258	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE		27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 Inter-satellite 5.536	
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE 5.538 5.540			27.5-30	27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	Satellite Communications (25) Fixed Microwave (101)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.516B 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.525 5.526 5.527 5.529 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542		29.5-30 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.529 5.543	Satellite Communications (25)
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.516B 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542					

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United States (US) footnotes

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US83 In the 1432–1435 MHz band, Federal stations in the fixed and mobile services may operate indefinitely on a primary basis at the 22 sites listed in the table below. The first 21 sites are in the United States and the last site is in Guam (GU). All other Federal stations in the fixed and mobile services shall operate in the band 1432–1435 MHz on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999.

State	Site	North	West	Radius
AK	Fort Greely	63°47′	145°52′	80
AL	Redstone Arsenal	34°35′	086°35′	80
AZ	Fort Huachuca	31°33′	110°18′	80
AZ	Yuma Proving Ground	32°29′	114°20′	160
CA	China Lake/Edwards AFB	35°29′	117°16′	100
CA	Lemoore	36°20′	119°57′	120
FL	Eglin AFB/Ft Rucker, AL	30°28′	086°31′	140
FL	NAS Cecil Field	30°13′	081°52′	160
MD	Patuxent River	38°17′	076°24′	70
ME	Naval Space Operations Center	44°24′	068°01′	80
MI	Alpene Range	44°23′	083°20′	80
MS	Camp Shelby	31°20′	089°18′	80
NC	MCAS Cherry Point	34°54′	076°53′	100
NM	White Sands Missile Range/Holloman AFB	32°11′	106°20′	160
NV	NAS Fallon	39°30′	118°46′	100
NV	Nevada Test and Training Range (NTTR)	37°29′	114°14′	130
SC	Beaufort MCAS	32°26′	080°40′	160
SC	Savannah River	33°15′	081°39′	3
UT	Utah Test and Training Range/Dugway Proving Ground, Hill AFB	40°57′	113°05′	160
VA	NAS Oceana	36°49′	076°01′	100
WA	NAS Whidbey Island	48°21′	122°39′	70
GU	NCTAMS	13°35′	144°51′	80

Note: The coordinates (North latitude and West longitude) are listed under the headings North and West. The Guam entry under the West heading is actually 144°51′ East longitude. The operating radii in kilometers are listed under the heading Radius.

* * * * *

US97 The following provisions shall apply in the band 2305–2320 MHz:

(a) In the sub-band 2305–2310 MHz, space-to-Earth operations are prohibited.

(b) Within 145 km of Goldstone, CA (35°25′33″ N, 116°53′23″ W), Wireless Communications Service (WCS) licensees operating base stations in the band 2305–2320 MHz shall, prior to operation of those base stations, achieve a mutually satisfactory coordination agreement with the National Aeronautics and Space Administration (NASA).

Note: NASA operates a deep space facility in Goldstone in the band 2290–2300 MHz.

* * * * *

US109 The band 3650–3700 MHz is also allocated to the Federal radiolocation service on a primary basis at the following sites: St. Inigoes, MD (38°10′ N,76°23′ W) and Pensacola, FL (30°21′28″ N, 87°16′26″ W). The FCC shall coordinate all non-Federal operations within 80 km of these sites with NTIA on a case-by-case basis.

* * * * *

US117 In the band 406.1–410 MHz, the following provisions shall apply:

(a) Stations in the fixed and mobile services are limited to a transmitter output power of 125 watts, and new authorizations for stations, other than mobile stations, are subject to prior coordination by the applicant in the following areas:

(1) Within Puerto Rico and the U.S. Virgin Islands, contact Spectrum Manager, Arecibo Observatory, HC3 Box 53995, Arecibo, PR 00612. Phone: 787–878–2612, Fax: 787–878–1861, Email: *prcz@naic.edu.*

(2) Within 350 km of the Very Large Array (34°04′44″ N, 107°37′06″ W), contact Spectrum Manager, National Radio Astronomy Observatory, P.O. Box O, 1003 Lopezville Road, Socorro, NM 87801. Phone: 505–835–7000, Fax: 505–835–7027, Email: *nrao-rfi@nrao.edu.*

(3) Within 10 km of the Table Mountain Observatory (40°08′02″ N, 105°14′40″ W) and for operations only within the sub-band 407–409 MHz, contact Radio Frequency Manager, Department of Commerce, 325 Broadway, Boulder, CO 80305. Phone: 303–497–4619, Fax: 303–497–6982, Email: *frequencymanager@its.bldrdoc.gov.*

(b) Non-Federal use is limited to the radio astronomy service and as provided by footnote US13.

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US128 In the band 10–10.5 GHz, pulsed emissions are prohibited, except for weather radars on board meteorological satellites in the sub-band 10–10.025 GHz. The amateur service, the amateur-satellite service, and the non-Federal radiolocation service, which shall not cause harmful interference to the Federal radiolocation service, are the only non-Federal services permitted in this band. The non-Federal radiolocation service is limited to survey operations as specified in footnote US108.

US130 The band 10.6–10.68 GHz is also allocated on a primary basis to the radio astronomy service. However, the radio astronomy service shall not receive protection from stations in the fixed service which are licensed to operate in the one hundred most populous urbanized areas as defined by the 1990 U.S. Census. For the list of observatories operating in this band, see footnote US131.

US131 In the band 10.7–11.7 GHz, non-geostationary satellite orbit licensees in the fixed-satellite service (space-to-Earth), prior to commencing operations, shall coordinate with the following radio astronomy observatories to achieve a mutually acceptable agreement regarding the protection of the radio telescope facilities operating in the band 10.6–10.7 GHz:

Observatory	North latitude	West longitude	Elevation (in meters)
Arecibo Observatory, PR	18°20′37″	66°45′11″	497
Green Bank Telescope (GBT), WV	38°25′59″	79°50′23″	807
Very Large Array (VLA), Socorro, NM	34°04′44″	107°37′06″	2,115
Very Long Baseline Array (VLBA) Stations:			
Brewster, WA	48°07′52″	119°41′00″	250
Fort Davis, TX	30°38′06″	103°56′41″	1,606
Hancock, NH	42°56′01″	71°59′12″	296
Kitt Peak, AZ	31°57′23″	111°36′45″	1,902
Los Alamos, NM	35°46′30″	106°14′44″	1,962
Mauna Kea, HI	19°48′05″	155°27′20″	3,763
North Liberty, IA	41°46′17″	91°34′27″	222
Owens Valley, CA	37°13′54″	118°16′37″	1,196
Pie Town, NM	34°18′04″	108°07′09″	2,365
St. Croix, VI	17°45′24″	64°35′01″	16

* * * * *

US288 In the territorial waters of the United States, the preferred frequencies for use by on-board communication stations shall be 457.525 MHz, 457.550 MHz, 457.575 MHz and 457.600 MHz paired, respectively, with 467.750 MHz, 467.775 MHz, 467.800 MHz and 467.825 MHz. Where needed, equipment designed for 12.5 kHz channel spacing using also the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz and 467.5625 MHz may be introduced for on-board communications. The characteristics of the equipment used shall conform to those specified in Recommendation ITU–R M.1174–2.

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Non-Federal Government (NG) Footnotes

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NG32 Frequencies in the bands 454.6625–454.9875 MHz and 459.6625–459.9875 MHz may be assigned to domestic public land and mobile stations to provide a two-way air-ground public radiotelephone service.

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NG43 Except as permitted below, the use of the band 2180–2200 MHz is limited to the mobile-satellite service (MSS) and ancillary terrestrial components offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the band 2180–2200 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the MSS; and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

* * * * *

NG50 In the band 10–10.5 GHz, non-Federal stations in the radiolocation service shall not cause harmful interference to the amateur service; and in the sub-band 10.45–10.5 GHz, these stations shall not cause harmful interference to the amateur-satellite service.

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Federal Government (G) Footnotes

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G27 In the bands 225–328.6 MHz, 335.4–399.9 MHz, and 1350–1390 MHz, the fixed and mobile services are limited to the military systems.

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G117 In the bands 7.25–7.75 GHz, 7.9–8.4 GHz, 17.375–17.475 GHz, 17.6–21.2 GHz, 30–31 GHz, 33–36 GHz, 39.5–41 GHz, 43.5–45.5 GHz, and 50.4–51.4 GHz, the Federal fixed-satellite and mobile-satellite services are limited to military systems.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 4. Section 15.242 is amended by revising paragraph (e) to read as follows:

§ 15.242 Operation in the bands 174–216 MHz and 470–668 MHz.

* * * * *

(e) The user and the installer of a biomedical telemetry device operating within the frequency range 608–614 MHz and that will be located within 32 km of the very long baseline array (VLBA) stations or within 80 km of any of the other radio astronomy observatories noted in footnote US385 of Section 2.106 of this chapter must coordinate with, and obtain the written concurrence of, the director of the affected radio astronomy observatory before the equipment can be installed or operated. The National Science Foundation point of contact for coordination is: Spectrum Manager, Division of Astronomical Sciences, NSF Room 1045, 4201 Wilson Blvd., Arlington, VA 22230; tel: (703) 306–1823.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 5. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 6. Section 90.103 is amended by revising the last sentence in paragraph (c)(21) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(c) * * *

(21) * * * Authorizations will be granted on a case-by-case basis; however, operations proposed to be located within the zones set forth in footnote US269, § 2.106 of this chapter should not expect to be accommodated.

* * * * *

■ 7. Section 90.1331 is amended by revising paragraph (b)(1) to read as follows:

§ 90.1331 Restrictions on the operation of base and fixed stations.

* * * * *

(b)(1) Except as specified in paragraph (b)(2) of this section, base and fixed stations may not be located within 80 km of the following Federal Government radiolocation facilities:

St. Inigoes, MD—38°10′ N., 76°, 23′ W.

Pensacola, FL—30°21′28″ N., 87°, 16′ 26″ W.

Note to paragraph (b)(1): Licensees installing equipment in the 3650–3700 MHz band should determine if there are any nearby Federal Government radar systems that could affect their operations. Information regarding the location and operational characteristics of the radar systems operating adjacent to this band are provided in NTIA TR–99–361.

* * * * *

[FR Doc. 2012–31052 Filed 12–26–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 77, No. 248

Thursday, December 27, 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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 74, 87, 90, and 97

[ET Docket No. 12–338; FCC 12–140]

WRC–07 Implementation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to implement allocation decisions from the World Radiocommunication Conference (Geneva, 2007) (WRC–07), make other allocation changes that are not related to WRC–07, and make certain updates to its service rules. The proposed actions are designed to conform the Commission's rules to the *WRC–07 Final Acts* and to provide significant benefits to the American public.

DATES: Comments must be filed on or before February 25, 2013, and reply comments must be filed on or before March 27, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, email: *tom.mooring@fcc.gov*, TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 12–338, by any of the following methods:

▪ *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Mail:* Tom Mooring, Office of Engineering and Technology, Room 7–A123, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 12–338, FCC 12–140, adopted November 15, 2012, and released November 19, 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.* Pursuant to §§ 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 the Commission's Electronic Comment Filing System (ECFS). *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/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th 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 and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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 Notice of Proposed Rulemaking

1. In the *Notice of Proposed Rulemaking (NPRM)*, the Commission proposed to amend parts 1, 2, 74, 78, 87, 90, and 97 of its rules to implement allocation decisions from the World Radiocommunication Conference (Geneva, 2007) (WRC–07) concerning portions of the radio frequency (RF) spectrum between 108 MHz and 20.2 GHz and to make certain updates to its rules in this frequency range. The *NPRM* follows the Commission's July 2010 *WRC–07 Table Clean-up Order,* which made certain non-substantive, editorial revisions to the Table of Frequency Allocations (Allocation Table) and to other related rules. The Commission also addressed the recommendations for implementation of the *WRC–07 Final Acts* that the National Telecommunications and Information Administration (NTIA) submitted to the Commission in August 2009. As part of its comprehensive review of the Allocation Table, the Commission also proposed to make allocation changes that are not related to the *WRC–07 Final Acts* and update certain service rules, and requested comment on other allocation issues that concern portions of the RF spectrum between 137.5 kHz and 54.25 GHz.

2. Specifically, the Commission proposed to:

• Raise the secondary amateur service allocation in the 1900–2000 kHz band to primary status, remove the Federal and non-Federal radiolocation service (RLS) allocations from this band, and remove this band from §§ 90.103, 97.301, and 97.303.

• Allocate the 108–117.975 MHz band to the aeronautical mobile route

(R) service (AM(R)S) on a primary basis for Federal/non-Federal shared use, limited to systems operating in accordance with recognized international aeronautical standards and Resolution 413 (Rev.WRC–07), and in the 108–112 MHz sub-band, to systems composed of ground-based transmitters and associated receivers that provide navigational information in support of air navigation functions. Further, the Commission proposed to prohibit the proposed AMR(R)S use from constraining the use of the 88–108 MHz band by stations in the broadcasting service (FM radio stations) operating in accordance with 47 CFR part 73.

• Allocate the 156.4875–156.5125 MHz and 156.5375–156.5625 MHz bands to the fixed and land mobile services on a primary basis for non-Federal use, subject to not causing harmful interference to, nor claiming protection from, the maritime mobile VHF radiocommunication service, and with the licensing of this spectrum restricted to the area consisting of VHF Public Coast Station Areas 10–42. The *NPRM* also requested comment on whether additional areas can be licensed while fully protecting VHF Channel 70 reception.

• Allocate the 156.5125–156.5375 MHz band to the maritime mobile service (MMS) on a primary basis for Federal and non-Federal use, restricted to the following types of operations: Distress, urgency, safety, and calling via Digital Selective Calling (DSC) techniques.

• Make the frequencies 156.525 MHz and 156.8 MHz available for search and rescue (SAR) operations concerning manned space vehicles.

• Make the frequency 156.3 MHz available for use by aircraft stations for the purpose of SAR operations and other safety-related communications, permit Federal ship and coast stations to operate on certain navigation frequencies (156.775 MHz and 156.825 MHz) on a primary basis, and simplify the U.S. Table by combining these proposed provisions with existing provisions in a new U.S. footnote (US52).

• Allocate the 161.9625–161.9875 MHz (AIS 1) and 162.0125–162.0375 MHz (AIS 2) bands to the mobile-satellite service (MSS) on a secondary basis for Federal/non-Federal shared use for the reception of automatic identification system (AIS) emissions from stations operating in the maritime mobile service. The *NPRM* also solicited comment on whether the Commission should implement the WRC–12 allocation decisions with regard to the AIS 1 and AIS 2 bands, *i.e.,* whether the Commission should allocate these bands to the aeronautical mobile (off-route) service (AM(OR)S) and the MSS (Earth-to-space) on a primary basis, restrict the use of these bands by the AM(OR)S to AIS emissions from SAR aircraft, and require that these operations not constrain the operation of allocated services in adjacent bands.

• Amend the quiet zone rules in § 1.924(f) to reflect the areas listed in paragraph (a) of US270, limit its applicability to RLS systems, and move the revised text from paragraph (f) to paragraph (e).

• Amend NG120 by revising ''band 928–960 MHz'' and ''mobile operations'' to ''bands 928–929 MHz, 932–932.5 MHz, 941–941.5 MHz, and 952–960 MHz'' and ''associated mobile operations,'' respectively, by deleting the phrase ''as specified in 47 CFR part 101.''

• Allocate the 960–1164 MHz band to the AM(R)S on a primary basis for Federal/non-Federal use to the 960–1164 MHz band and require that any AM(R)S systems operating in the 960–1164 MHz band not cause harmful interference to, claim protection from, or impose constraints on aeronautical radionavigation service (ARNS) systems operating in that band.

• Remove the conditional secondary non-Federal fixed-satellite service (FSS) allocation from the 1390–1392 MHz and 1430–1432 MHz bands.

• Delete the unused non-Federal aeronautical mobile telemetry (AMT) allocation in the 2310–2320 MHz band from US339 and remove non-Federal access to two unused frequencies (2312.5 MHz and 2352.5 MHz) that are available for telemetry or telecommand operations of expendable and reusable launch vehicles.

• Update US203 to list the radio astronomy stations that observe in the 4800–4940 MHz and 14.47–14.5 GHz bands.

• Allocate the 5091–5150 MHz band to the aeronautical mobile service on a primary basis for Federal/non-Federal shared use, restricted to surface applications at airports, AMT transmissions, and aeronautical security transmissions. The *NPRM* proposed to restrict AMT use of the 5091–5150 MHz band to the 52 flight test areas listed in new footnote US111, except that additional locations may be authorized on a case-by-case basis. The *NPRM* requested comment on whether aeronautical security transmissions should be excluded from the list of permitted uses. The *NPRM* proposed to remove the precedence that the Microwave Landing System (MLS) currently has over other uses of the 5091–5150 MHz band and to extend the date after which no new assignments may be made to earth stations providing feeder links for non-geostationary MSS systems to January 1, 2016.

• Amend part 87 of the Commission's rules to bring the proposed AMT allocation in the 5091–5150 MHz band into immediate effect, remove all references to the 1525–1535 MHz and 2310–2345 MHz bands from part 87, and list the 2390–2395 MHz band in all appropriate rule sections.

• Raise the secondary Federal RLS allocation in the 9000–9200 MHz and 9300–9500 MHz bands to primary status, allocate the 9300–9500 MHz band to the Earth exploration-satellite service (EESS) (active) and the space research service (SRS) (active) on a primary basis for Federal use, allocate the 9800–9900 MHz band to the EESS (active) and SRS (active) on a secondary basis for Federal use, require that the use of these proposed allocations not cause harmful interference to existing primary operations, and limit active sensor use of the 9300–9500 MHz band to systems requiring more than 300 MHz of bandwidth.

• Allocate the 9300–9500 MHz and 9800–9900 MHz bands to the EESS (active) and the SRS (active) on a secondary basis for non-Federal use. The *NPRM* solicited comment on whether there is a non-Federal requirement for primary EESS (active) and SRS (active) allocations in the 9300–9500 MHz band.

• Amend US401 and §§ 1.924, 74.32, and 78.19 of the Commission's rules by adding coordination areas in San Miguel, California and Guam for terrestrial operations in the 17.7–19.7 GHz band, consistent with a request by NTIA. The *NPRM* also proposed to amend US334 to limit primary Federal earth stations in the 17.8–18.3 GHz and 19.3–19.7 GHz sub-bands to the Denver, Colorado; Washington, DC; San Miguel, California; and Guam areas.

• Amend §§ 1.924, 74.32, and 78.19 to bring better consistency between these rules and to update these rules, *e.g.,* to remove the Morrison, Colorado location from § 78.19. The *NPRM* sought comment on whether the coordination requirements for Multichannel Video Programming Distributors (MVPD) operations in § 74.32, and references in § 1.924 to MVPD operations pursuant to parts 74 and 78, should be removed from the Commission's rules.

• Allocate the 18–18.1 GHz band to the meteorological-satellite service for space-to-Earth transmission on a primary basis.

• Update the list of radio astronomy stations in US388 that observe in the

81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands by removing the Five Colleges Radio Observatory and by adding the Heinrich Hertz Submillimeter Observatory, which is located at Mount Graham, Arizona. The *NPRM* proposed to require coordination within 150 kilometers of the new observatory at Mount Graham.

• Implement WRC–07's mandatory unwanted emission limits in the 22.55–23.55 GHz band for all new NGSO inter-satellite service systems, and requested comment on how these limits should apply to the incumbent licensees system on a going-forward basis.

• Implement WRC–07's mandatory unwanted emission limits for non-Federal FSS earth stations that transmit in the 49.7–50.2 GHz and 50.4–50.9 GHz bands. The *NPRM* sought comment on how adoption of these mandatory unwanted emission limits for earth stations transmitting in the 49.7–50.2 GHz band will affect the implementation of the Commission's band plan for the 36–51.4 GHz band (V-band) and on whether and how these provisions should apply to existing licensees in these bands.

• Urge licensees of fixed stations in the 31–31.3 GHz band to limit the maximum elevation angle of the antenna main beam to 20° and to employ automatic transmitter power control (ATPC). The *NPRM* solicits comment on whether the Commission should adopt WRC–07's mandatory unwanted emission limit for the 31–31.3 GHz band or whether an alternative emission limit would be sufficient. The NRPM also requested comment on whether the aeronautical mobile service allocation should be removed from the 31–31.3 GHz band.

• Implement WRC–07's mandatory unwanted emission limits for future non-Federal fixed stations that transmit in the 51.4–52.6 GHz band.

• Urge operators in the 1390–1395 MHz and 1427–1452 MHz bands to comply with the non-mandatory unwanted emission levels specified in ITU Resolution 750 (except that Wireless Medical Telemetry Service devices would be excluded).

• Revise US265 by removing the phrase ''per 250 kHz,'' by adding the advisory language for fixed point-to-point systems, and by prohibiting point-to-multipoint use of the 10.6–10.68 GHz band. The *NPRM* also proposed to urge licensees to employ ATPC and to permit licensees holding a valid authorization as of the effective date of the Report and Order in this proceeding to continue to operate as authorized. The *NPRM* requested comment on whether the Commission should: (1) Prohibit fixed stations with main beam elevation angles greater than 20° from transmitting on frequencies in the 10.6–10.68 GHz band; (2) require fixed stations (using paired frequencies) to transmit on frequencies in the 10.6–10.68 GHz band using the lower elevation angle; (3) require the use of ATPC; (4) raise the maximum equivalent isotropically radiated power (EIRP) limit from 40 to 48 dBW; and (5) urge licensees to limit the off-axis EIRP above 20° to −10 dBW.

• Implement the spectrum sharing criteria adopted at WRC–07 for the 36–37 GHz band (which is not currently licensed by the Commission).

• Renumber various footnotes in accordance with Commission policy, to replace various placeholder footnotes with the international footnotes adopted at WRC–07, remove duplicative rule/unneeded text, correct grammatical/typographical errors in the Commission's rules, and otherwise update the Commission's rules.

3. In addition, the Commission solicited comment on whether it should:

• Allocate the 135.7–137.8 kHz band to the amateur radio service on a secondary basis, with amateur stations restricted to an EIRP of 1 watt and required to protect power line carrier (PLC) operations.

• Remove a lightly-used primary non-Federal AMT allocation in the 2345–2360 MHz band and an unused primary radionavigation service (RNS) allocation from the 24.75–25.05 GHz band. If the Commission decides to remove the RNS allocation from the 24.75–25.05 GHz band, then it would amend NG167 by employing the international footnote 5.535 text in the 24.75–25.05 GHz band, remove the Part 87 cross reference from the Allocation Table, and remove the 24.75–25.05 GHz band from §§ 87.173(b) and 87.187(x).

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the *NPRM* for comments. The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

5. The Commission proposed to amend parts 1, 2, 74, 78, 87, 90, and 97 of its rules to implement allocation decisions from the World Radiocommunication Conference (Geneva, 2007) (WRC–07) concerning the radio frequency (RF) spectrum between 108 MHz and 20.2 GHz and otherwise make certain updates to its rules in this frequency range. The rules proposed in this *NPRM* affect the frequency bands and radio services discussed in section D, below.

B. Legal Basis

6. The proposed action is authorized under sections 1, 4, 301, 302(a), and 303(b), (c), and (f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), and 303(b), (c), and (f).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

7. 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, if adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] 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).[7]

Small Businesses, Small Organizations, and Small Governmental

[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) Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[2] *See 5 U.S.C. 603(a).*

[3] *See* 5 U.S.C. 603(a).

[4] 5 U.S.C. 603(b)(3).

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

[6] 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**.''

[7] 15 U.S.C. 632.

Jurisdictions. Our action may, over time, affect small entities that are *not* easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.[8] First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.[9] In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [10] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[11] Finally, 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.'' [12] Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.[13] We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' [14] Thus, we estimate that most governmental jurisdictions are small.

Amateur Radio Service. Because ''small entities,'' as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to ''small entities.'' Rather, it applies exclusively to individuals who are the control operators of amateur radio stations.

Satellite Telecommunications and All Other Telecommunications. 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.[15] The second has a size standard of $25 million or less in annual receipts.[16]

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.'' [17] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms operated for that entire year.[18] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[19] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category, *i.e.* ''All Other Telecommunications'' comprises ''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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [20] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[21] Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49, 999,999.[22] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities.

D. Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

8. In the following paragraphs, we describe the proposals and their expected impact on small entities. First, we describe the proposed deletion of unused non-Federal allocations. Second, we describe all other proposed changes. We request comment on our analysis.

9. *Deletion of Unused Allocations.* The *NPRM* proposed to delete the following unused allocations: (1) the radiolocation service (RLS) from the 1900–2000 kHz band; (2) the fixed-satellite service (FSS) from the 1390–1392 MHz and 1430–1432 MHz bands; and (3) the aeronautical mobile service (AMS) (telemetry) from the 2310–2320 MHz band. Because there are no licensees operating stations in the aforementioned radiocommunication services and frequency bands, the proposed deletions will have no impact on small entities.

10. The *NPRM* also solicited comment on deleting the aeronautical mobile service allocation from the 31–31.3 GHz band. Because there is no part 87 equipment authorized above 20 GHz, we believe that it is unlikely that this service would be used in the foreseeable future. Therefore, we believe that the proposed deletions will not affect small businesses.

11. *135.7–137.8 kHz.* The *NPRM* sought comment on whether this band should be allocated to the amateur service on a secondary basis. The only non-Federal use of this band is by Part 15 devices, such as Power Line Carrier (PLC) systems. If the band is allocated to the amateur service, amateur stations and PLC systems that operate PLC systems on electric transmission lines will most likely require coordination. We believe that any additional coordination requirements would have a *de minimis* impact on electric power companies.

12. *156.4875–156.5625 MHz.* The *NPRM* proposed to allocate the 156.4875–156.5125 and 156.5375–156.5625 MHz bands to the fixed service (FS) and land mobile service on a primary basis for non-Federal use, subject to not causing harmful interference to, nor claiming protection from, the maritime mobile VHF

[8] *See* 5 U.S.C. 601(3)–(6).

[9] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *web.sba.gov/faqs* (last visited May 6, 2011; figures are from 2009).

[10] 5 U.S.C. 601(4).

[11] Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).

[12] 5 U.S.C. 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007).

[14] The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 small governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,125. If we make the same assumption about special districts and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 special districts. Therefore, of the 89,476 small governmental organizations documented in 2007, as many as 89,506 may be considered small under the applicable standard. This data may overestimate the number of such organizations that has a population of 50,000 or less. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[15] 13 CFR 121.201, North American Industry Classification System (''NAICS'') code 517410.

[16] 13 CFR 121.201, NAICS code 517919.

[17] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications.''

[18] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[19] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[20] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search.*

[21] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[22] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

radiocommunication service. The *NPRM* also proposed to reallocate the 156.5125–156.5375 MHz band to the MMS (distress, urgency, safety and calling via digital selective calling). Because all existing MMS licensees would be protected from any interference caused by the proposals, the only possible impact would be to the 20 call signs authorizing land mobile service use. Because 18 of these call signs are held by the State of Arizona; one is held by the County of Los Angeles, California (CA); and one is held by the City of La Mesa, CA, which has a population of 57,065 (2010 census), none of these licensees are small governmental jurisdictions.

13. *AIS satellite reception.* The *NPRM* proposed to permit satellites to receive Automatic Identification System (AIS) transmissions. Because this use will not be protected from harmful interference due to the operation of terrestrial services, no small entity will be negatively impacted. We believe that there may be a positive impact on Orbcomm Inc., which is a small business, if this allocation is adopted.

14. *108–117.975 MHz.* The *NPRM* proposed to allocate the band to the aeronautical mobile route service (AM(R)S) on a primary basis and to add new footnote US197A to the U.S. Table. US197A states that AM(R)S use of the 108–117.975 MHz band must not: (1) Cause harmful interference to the aeronautical radionavigation service (ARNS) (see Resolution 413); and (2) constrain the use of the 88–108 MHz band by FM radio stations operating in accordance with 47 CFR part 73. Because all incumbent licensees would be protected from interference caused by the new allocation, there can be no significant economic impact on small entities.

15. *960–1164 MHz.* The *NPRM* proposed to allocate the band to the AM(R)S on a primary basis and to add RR 5.327A to the U.S. Table. RR 5.327A states that AM(R)S use of the 960–1164 MHz band is limited to systems that operate in accordance with Resolution 417, which states that AM(R)S must not cause harmful interference to the ARNS. Because all incumbent licensees would be protected from interference caused by the new allocation, there can be no significant economic impact on small entities.

16. *5091–5150 MHz.* The *NPRM* proposed to allocate the band to the AMS on a primary basis and to add RR 5.444B to the U.S. Table. RR 5.444B, *inter alia,* restricts AMS use of the 5091–5150 MHz band to: (1) AM(R)S systems operating in accordance with international aeronautical standards, limited to surface applications at airports, and in accordance with Resolution 748, which states that this AM(R)S use may not cause harmful interference to the ARNS; (2) AMT transmissions from aircraft stations in accordance with Resolution 418, which requires that AMT operations use the spectrum sharing criteria set forth in Annex 1 of that Resolution; and (3) aeronautical security transmissions in accordance with Resolution 419, which states that administrations, in making assignments, shall ensure that AM(R)S requirements take precedence over AMS applications. Currently, non-Federal use of the 5091–5150 MHz band is limited to feeder uplinks for non-geostationary satellite orbit systems in the mobile-satellite service. No harmful interference is expected to the receivers on board the space stations.

17. *1390–1395 and 1427–1435 MHz.* The *NPRM* proposed to encourage licensees of stations authorized pursuant to parts 27 and 90 of the Commission's rules that transmit in the 1390–1395 MHz and 1427–1435 MHz band to comply with WRC–07's non-mandatory maximum values. The Commission has issued 64 call signs to 1 licensee (TerreStar 1.4 Holdings LLC) for the 1390–1395 MHz band and 13 call signs to 2 licensees (TerreStar 1.4 Holdings LLC and Mississippi State University) for the 1432–1435 MHz band. The Commission has issued 129 call signs to 47 licensees in the 1427–1432 MHz band. We believe that many of the licensees operating in these bands are small entities and that any costs and/or administrative burdens associated with the proposal will not be significant or otherwise unduly burden those small entities.

18. *1435–1452 MHz.* The *NPRM* proposed to encourage operators of aeronautical mobile telemetry (AMT) stations that transmit in the 1435–1452 MHz band to comply with WRC–07's non-mandatory unwanted emission level. The *NPRM* also request comment on whether AMT operators that can not meet this unwanted emission level should be required to seek their operational requirements in the 1452–1525 MHz band prior to operating in the 1435–1452 MHz band. As of April 24, 2012, the Commission has issued 23 calls to 13 licensees for stations in the Aeronautical and Fixed Service to operate in the 1435–1452 MHz band. We believe that at most 4 of these licensees are small businesses and that any costs and/or administrative burdens associated with the proposal will not unduly burden or have a significant economic impact on those limited number of small entities.

19. *9000–9200 MHz.* The *NPRM* proposed to raise the secondary Federal RLS from secondary to primary status. Because non-Federal RLS use is authorized on the condition that it not cause harmful interference to the secondary Federal RLS, the upgrade of the Federal RLS can have no significant economic impact on small entities.

20. *9300–9500 MHz.* The *NPRM* proposed to raise the secondary Federal RLS from secondary to primary status and to also allocate the 9300–9500 MHz band to the Earth exploration-satellite service (EESS) (active) and space research service (SRS) (active). Because non-Federal RLS use is authorized on the condition that it not cause harmful interference to the secondary Federal RLS, the upgrade of the Federal RLS can have no significant economic impact on small entities. We also believe that the proposed EESS (active) and SRS (active) allocations will have no significant economic impact on small entities.

21. *9800–9900 MHz.* The *NPRM* proposed to allocate the 9300–9500 MHz band to the EESS (active) and SRS (active) on a secondary basis. Because non-Federal RLS use is on a secondary basis to Federal RLS, we do believe that the proposed additional uses will have no significant economic impact on small entities.

22. *10.6–10.68 GHz.* The *NPRM* proposed to limit the power supplied to the antenna to -3 dBW (instead of -3 dBW/250 kHz) and to add advisory language for fixed point-to-point systems. The *NPRM* also solicits comment on whether more stringent operating requirements should apply to future fixed stations operating in this band. Because most licensed fixed stations already meet the proposed -3 dBW requirement, we do not believe that this proposal will affect a substantial number of small entities. We also do not believe that the advisory language and more stringent operating requirements would affect a substantial number of small entities.

23. *GOES Expansion.* The *NPRM* proposed to allocate the 18–18.1 GHz band to the meteorological-satellite service (space-to-Earth) on a primary basis. The use of this allocation is expected to be limited to three locations. This band is allocated to the non-Federal FS on a primary basis. If adopted, this proposal would limit future FS licensing near the receiving earth stations. We do not believe that this proposal will affect a substantial number of small entities.

24. *22.55–23.55 GHz.* The *NPRM* proposed to adopt the WRC–07's mandatory unwanted emission limits from all new non-geostationary satellite

orbit systems in the inter-satellite service transmitting in the 22.55–23.55 GHz band, and requested comment on how these limits should apply to the only incumbent licensee's (Iridium's) satellites on a going-forward basis. We do not believe that this proposal will affect a substantial number of small entities.

25. *31–31.3 GHz.* The *NPRM* proposed to urge licensees of fixed stations transmitting in the 31–31.3 GHz band to limit the maximum elevation angle of the antenna main beam to 20° and to employ automatic transmitter power control. The *NPRM* also requested comment on whether the Commission adopt WRC–07's mandatory unwanted emission limits for these stations. As of April 24, 2012, the Commission has issued 852 call signs to operate in the 31–31.3 GHz band: 109 licenses (777 call signs) in the Local Multipoint Distribution Service (LMDS); 19 licensees (23 call signs) in the Common Carrier Fixed Point-to-Point Microwave Service (CF) to 19 licensees; 9 licensees (9 call signs) in the Local Television Transmission Service (CT); 5 licensees (6 call signs) in the Microwave Public Safety Pool (MW); and 1 licensee (the State of Nevada, with 37 call signs) in the Microwave Industrial/Business Pool (MG). We believe that many of the LMDS licensees are small businesses, that at most 2 of the CF licensees are small businesses, that at most 3 of the CT licensees are small businesses, that at most 1 of the MW licensees are small governmental jurisdictions, and that the sole MG licensee is not a small entity. We do not believe that any costs and/or administrative burdens associated with the proposal will unduly burden or have a significant economic impact on those limited number of small entities.

26. *36–37, 49.7–40.2, 50.4–50.9, and 51.4–52.6 GHz.* The *NPRM* proposed to adopt WRC–07's: 1) Spectrum sharing criteria for stations in the fixed and mobile services transmitting in the 36–37 GHz band; 2) mandatory unwanted emission limits for earth stations in the fixed-satellite service transmitting in the 49.7–40.2 and 50.4–50.9 GHz bands; and 3) mandatory unwanted emission limits for fixed stations transmitting in the 51.4–52.6 GHz band. Because the Commission has not issued licenses for the 36–37 GHz, 49.7–40.2 GHz, 50.4–50.9 GHz, and 51.4–52.6 GHz bands, these proposals will have no significant economic impact on small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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.[23]

28. As we have explained in detail in section D, we do not expect that our proposals will have a significant economic impact on small entities. However, the *NPRM* requested comment on interference mitigation techniques, other than those adopted at WRC–07, which would lessen the long-term impact on all licensees in the 10.6–10.68 GHz, 22.55–23.55 GHz, and 31–31.3 GHz bands, while fully protecting passive sensor operations.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

29. None.

Ordering Clauses

30. Pursuant to sections 1, 4, 301, 302(a), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), and 303, and section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), this Notice of Proposed Rule Making is hereby *adopted.*

31. *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 Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 1, 2, 74, 78, 87, 90, and 97

Communications equipment, International telecommunications, Radio, Satellites, Spectrum, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 74, 78, 87, 90, and 97 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112–96.

2. Section 1.924 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.924 Quiet zones.

* * * * *

(e) *420–450 MHz band.* Applicants for pulse-ranging radiolocation systems operating in the 420–450 MHz band along the shoreline of the conterminous United States and Alaska, and for spread spectrum radiolocation systems operating in the 420–435 MHz sub-band within the conterminous United States and Alaska, should not expect to be accommodated if their area of service is within:

(1) Arizona, Florida, or New Mexico;

(2) Those portions of California and Nevada that are south of latitude 37°10′ N;

(3) That portion of Texas that is west of longitude 104°W; or

(4) The following circular areas:

(i) 322 kilometers (km) of 30°30′ N, 86°30′ W

(ii) 322 km of 28°21′ N, 80°43′ W

(iii) 322 km of 34°09′ N, 119°11′ W

(iv) 240 km of 39°08′ N, 121°26′ W

(v) 200 km of 31°25′ N, 100°24′ W

(vi) 200 km of 32°38′ N, 83°35′ W

(vii) 160 km of 64°17′ N, 149°10′ W

(viii) 160 km of 48°43′ N, 97°54′ W

(ix) 160 km of 41°45′ N, 70°32′ W.

Note to § 1.924(e): The coordinates cited in this section are specified in terms of the ''North American Datum of 1983 (NAD 83).''

(f) *17.7–19.7 GHz band.* The following exclusion areas and coordination areas are established to minimize or avoid harmful interference to Federal Government earth stations receiving in the 17.7–19.7 GHz band:

(1) No application seeking authority for fixed stations, under parts 74, 78, or 101 of this chapter, supporting the operations of Multichannel Video Programming Distributors (MVPD) in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service will be accepted for filing if the proposed station is located within 20 km (or within 55 km if the modification application is for an outdoor low power operation pursuant to § 101.147(r)(14) of this chapter) of Denver, CO (39°43′ N,

[23] *See* 5 U.S.C. 603(c).

104°46′ W) or Washington, DC (38°48′ N, 76°52′ W).

(2) Any application for a new station license to provide MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the following areas:

(i) *Denver, CO area:*

(A) Between latitudes 41°30′ N and 38°30′ N and between longitudes 103°10′ W and 106°30′ W.

(B) Between latitudes 38°30′ N and 37°30′ N and between longitudes 105°00′ W and 105°50′ W.

(C) Between latitudes 40°08′ N and 39°56′ N and between longitudes 107°00′ W and 107°15′ W.

(ii) *Washington, DC area:*

(A) Between latitudes 38°40′ N and 38°10′ N and between longitudes 78°50′ W and 79°20′ W.

(B) Within 178 km of 38°48′ N, 76°52′ W.

(iii) *San Miguel, CA area:*

(A) Between latitudes 34°39′ N and 34°00′ N and between longitudes 118°52′ W and 119°24′ W.

(B) Within 200 km of 35°44′ N, 120°45′ W.

(iv) *Guam area:* Within 100 km of 13°35′ N, 144°51′ E.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

4. Section 2.1 is amended in paragraph (c) by revising the definitions for ''Earth Exploration-Satellite Service (EESS)'' and ''Equivalent Isotropically Radiated Power (e.i.r.p. or EIRP)'' to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(c) * * *

Earth Exploration-Satellite Service (EESS). (1) A radiocommunication service between earth stations and one or more space stations, which may include links between space stations, in which:

(i) Information relating to the characteristics of the Earth and its natural phenomena, including data relating to the state of the environment, is obtained from active sensors or passive sensors on Earth satellites;

(ii) Similar information is collected from airborne or Earth-based platforms;

(iii) Such information may be distributed to earth stations within the system concerned; and

(iv) Platform interrogation may be included.

(2) This service may also include feeder links necessary for its operation. (RR) (FCC)

* * * * *

Equivalent Isotropically Radiated Power (e.i.r.p. or EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain). (RR) (FCC)

* * * * *

5. Section 2.100 is revised to read as follows:

§ 2.100 International regulations in force.

The ITU *Radio Regulations,* Edition of 2008, have been incorporated to the extent practicable in Subparts A and B of this part.

6. In § 2.106, amend the Table of Frequency Allocations as follows:

a. Pages 5, 20, 22–24, 30–33, 37, 40–41, 46–47, 49, 51–52, 55–56, 58–60, and 62 are revised.

b. In the list of United States (US) Footnotes, footnotes US52, US79, US85, US100, US111, US113, US139, US145, US156, US157, US161, US197A, US227, US228D, US338A, US475, US476A, US482, US532, and US550A are added; footnotes US74, US334, US343, US401, and US519 are revised; and footnotes US37, US48, US51, US66, US77, US78, US106, US203, US226, US228, US263, US265, US290, US339, US368, US388, US398, US400, US444, and US444A are removed.

c. In the list of non-Federal Government (NG) Footnotes, footnotes NG22, NG35, NG60, and NG338A are added; and footnotes NG117, NG120, and NG144 are removed.

§ 2.106 Table of frequency allocations.

The revisions and additions read as follows:

* * * * *

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Table of Frequency Allocations			1800-3025 kHz (MF/HF)		Page 5
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
1800-1810 RADIOLOCATION 5.93	1800-1850 AMATEUR	1800-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIONAVIGATION Radiolocation	1800-2000	1800-2000 AMATEUR	Amateur Radio (97)
1810-1850 AMATEUR 5.98 5.99 5.100 5.101					
1850-2000 FIXED MOBILE except aeronautical mobile 5.92 5.96 5.103	1850-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIOLOCATION RADIONAVIGATION 5.102	5.97			
2000-2025 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103	2000-2065 FIXED MOBILE		2000-2065 FIXED MOBILE US340	2000-2065 MARITIME MOBILE US340 NG7	Maritime (80) Private Land Mobile (90)
2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 5.104 5.92 5.103					
2045-2160 FIXED MARITIME MOBILE LAND MOBILE 5.92	2065-2107 MARITIME MOBILE 5.105 5.106		2065-2107 MARITIME MOBILE 5.105 US296 US340		Maritime (80)
2160-2170 RADIOLOCATION 5.93 5.107	2107-2170 FIXED MOBILE		2107-2170 FIXED MOBILE US340	2107-2170 FIXED MOBILE except aeronautical mobile US340 NG7	Maritime (80) Private Land Mobile (90)
2170-2173.5 MARITIME MOBILE			2170-2173.5 MARITIME MOBILE (telephony) US340	2170-2173.5 MARITIME MOBILE US340	Maritime (80)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile 5.185	5.182 5.183 5.188 87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/ Booster (74G) Low Power Auxiliary (74H)
5.175 5.179 5.187 87.5-100 BROADCASTING 5.190	88-100 BROADCASTING		88-108 US93	88-108 BROADCASTING NG2 US93 NG5	Broadcast Radio (FM)(73) FM Translator/Booster (74L)
100-108 BROADCASTING 5.192 5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US197A US93		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.200 US26 US28 US36		
			121.9375-123.0875 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.200 US32 US33 US112		
			123.5875-128.8125 AERONAUTICAL MOBILE (R) US26 US36		
			128.8125-132.0125	128.8125-132.0125 AERONAUTICAL MOBILE (R)	
			132.0125-136 AERONAUTICAL MOBILE (R) US26		
5.111 5.200 5.201 5.202			136-137 US244	136-137 AERONAUTICAL MOBILE (R) US244	Page 20

144-146 AMATEUR AMATEUR-SATELLITE 5.216			144-148	144-146 AMATEUR AMATEUR-SATELLITE	Amateur Radio (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR 5.217	146-148 AMATEUR FIXED MOBILE 5.217		146-148 AMATEUR	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221		148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325 5.218 5.219 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) US320 US323 US325 5.218 5.219 US319	Satellite Communications (25)
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B 5.220 5.222 5.223			149.9-150.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.223		
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	150.05-156.4875 FIXED MOBILE		150.05-150.8 FIXED MOBILE US73 G30	150.05-150.8 US73	
			150.8-152.855 US73	150.8-152.855 FIXED LAND MOBILE NG4 NG51 NG112 US73 NG124	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-156.2475	152.855-154 LAND MOBILE NG4 NG124	Remote Pickup (74D) Private Land Mobile (90)
154-156.4875 FIXED MOBILE except aeronautical mobile (R) 5.226	5.225 5.226			154-156.2475 FIXED LAND MOBILE NG112 5.226 NG22 NG124 NG148	Maritime (80) Private Land Mobile (90) Personal Radio (95)
156.4875-156.5625 MARITIME MOBILE (distress and calling via DSC) 5.111 5.226 5.227			156.2475-156.5125 5.226 US52 US227 US266	156.2475-156.5125 MARITIME MOBILE NG22 5.226 US52 US227 US266 NG124	Maritime (80) Aviation (87)
			156.5125-156.5375 MARITIME MOBILE (distress, urgency, safety and calling via DSC) 5.111 5.226 US266		
156.5625-156.7625 FIXED MOBILE except aeronautical mobile (R) 5.226	156.5625-156.7625 FIXED MOBILE 5.225 5.226		156.5375-156.7625 5.226 US52 US227 US266	156.5375-156.7625 MARITIME MOBILE 5.226 US52 US227 US266	

Table of Frequency Allocations			156.7625-267 MHz (VHF)		Page 23
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
156.7625-156.8375 MARITIME MOBILE (distress and calling) 5.111 5.226			156.7625-156.8375 MARITIME MOBILE (distress, urgency, safety and calling) 5.111 5.226 US52 US266		Maritime (80) Aviation (87)
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE		156.8375-157.0375 5.226 US52 US266	156.8375-157.0375 MARITIME MOBILE 5.226 US52 US266	
			157.0375-157.1875 MARITIME MOBILE US214 5.226 US266 G109	157.0375-157.1875 5.226 US214 US266	Maritime (80)
			157.1875-161.575	157.1875-157.45 MOBILE except aeronautical mobile US266 5.226 NG111	Maritime (80) Aviation (87) Private Land Mobile (90)
				157.45-161.575 FIXED LAND MOBILE NG28 NG111 NG112 5.226 NG6 NG70 NG124 NG148 NG155	Public Mobile (22) Remote Pickup (74D) Maritime (80) Private Land Mobile (90)
			161.575-161.625 5.226 US52	161.575-161.625 MARITIME MOBILE 5.226 US52 NG6 NG17	Public Mobile (22) Maritime (80)
			161.625-161.9625	161.625-161.775 LAND MOBILE NG6 5.226	Public Mobile (22) Remote Pickup (74D) Low Power Auxiliary (74H)
			US266	161.775-161.9625 MOBILE except aeronautical mobile US266 NG6 5.226	Maritime (80) Private Land Mobile (90)
			161.9625-161.9875 MARITIME MOBILE (AIS) 5.227A US228D		Maritime (80)
			161.9875-162.0125	161.9875-162.0125 MOBILE except aeronautical mobile 5.226	
			162.0125-162.0375 MARITIME MOBILE (AIS) 5.227A US228D		
			162.0375-173.2 FIXED MOBILE US8 US11 US13 US73 US300 US312 G5	162.0375-173.2 US8 US11 US13 US73 US300 US312	Remote Pickup (74D) Private Land Mobile (90)

			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
5.226 5.227A 5.229	5.226 5.227A 5.230 5.231 5.232				
174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING NG5 NG14 NG115 NG149	Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G) Low Power Auxiliary (74H)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-217 Fixed Land mobile US210 US241 G2	216-219 FIXED MOBILE except aeronautical mobile US210 US241 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95)
			217-220 Fixed Mobile US210 US241	219-220 FIXED MOBILE except aeronautical mobile Amateur NG152 US210 US241 NG173	Maritime (80) Private Land Mobile (90) Amateur Radio (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE US241 US242		Private Land Mobile (90)
5.235 5.237 5.243		5.233 5.238 5.240 5.245	222-225	222-225 AMATEUR	Amateur Radio (97)
223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247		223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250			
	225-235 FIXED MOBILE		225-235 FIXED MOBILE G27	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250			
235-267 FIXED MOBILE 5.111 5.252 5.254 5.256 5.256A			235-267 FIXED MOBILE 5.111 5.256 G27 G100	235-267 5.111 5.256	Page 24

890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	US116 US268	
				894-896 AERONAUTICAL MOBILE US116 US268	Public Mobile (22)
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)
	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US218 US267 US275 G11	902-928 5.150 US218 US267 US275	ISM Equipment (18) Private Land Mobile (90) Amateur Radio (97)
	928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation		928-932 US116 US268 G2	928-929 FIXED US116 US268 NG35	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US268	Personal Communications (24)
				931-932 FIXED LAND MOBILE US116 US268	Public Mobile (22)
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			2310-2320 Fixed Mobile US100 Radiolocation G2 US97 US327	2310-2320 FIXED MOBILE BROADCASTING-SATELLITE RADIOLOCATION 5.396 US97 US100 US327	Wireless Communications (27)
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United States (US) Footnotes

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US52 In the VHF maritime mobile band (156–162 MHz), the following provisions shall apply:

(a) Federal stations in the maritime mobile service may also be authorized as follows: (1) Vessel traffic services under the control of the U.S. Coast Guard on a simplex basis by coast and ship stations on the frequencies 156.250 MHz (Channel 05), 156.550 MHz (Channel 11), 156.600 MHz (Channel 12) and 156.700 MHz (Channel 14); (2) Inter-ship use of the frequency 156.300 MHz (Channel 06) on a simplex basis; (3) Navigational bridge-to-bridge and navigational communications on a simplex basis by coast and ship stations on the frequency 156.650 MHz (Channel 13) and on the Lower Mississippi River the frequency 156.375 MHz (Channel 67); (4) Port operations use on a simplex basis by coast and ship stations on the frequencies 156.600 MHz and 156.700 MHz; (5) Environmental communications on the frequency 156.750 MHz (Channel 15) in accordance with the national plan; and (6) Duplex port operations use of the frequencies 157.000 MHz for ship stations and 161.600 MHz for coast stations (Channel 20).

(b) The frequency 156.300 MHz may also be used by Federal and non-Federal aircraft stations for the purpose of search and rescue operations and other safety-related communications.

(c) The frequencies 156.775 MHz (Channel 75) and 156.825 MHz (Channel 76) are available on a primary basis to Federal and non-Federal stations in the maritime mobile service for navigation-related port operations or ship movement only, and all precautions must be taken to avoid harmful interference to 156.800 MHz (Channel 16).

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US74 In the bands 25.55–25.67, 73–74.6, 406.1–410, 608–614, 1400–1427, 1660.5–1670, 2690–2700, and 4990–5000 MHz, and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 100–102, 109.5–111.8, 114.25–116, 148.5–151.5, 164–167, 200–209, and 250–252 GHz, the radio astronomy service shall be protected from unwanted emissions only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US385.

US79 In the bands 1390–1400 MHz and 1427–1432 MHz, the following provisions shall apply:

(a) Airborne and space-to-Earth operations are prohibited.

(b) Federal operations (except for devices authorized by the FCC for the Wireless Medical Telemetry Service) are on a non-interference basis to non-Federal operations and shall not constrain implementation of non-Federal operations.

* * * * *

US85 Differential-Global-Positioning-System (DGPS) Stations, limited to ground-based transmitters, may be authorized on a primary basis in the band 1559–1610 MHz for the specific purpose of transmitting DGPS information intended for aircraft navigation.

* * * * *

US100 The bands 2310–2320 and 2345–2360 MHz are also available for Federal aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof on a secondary basis to the Wireless Communications Service (WCS). The band 2345–2360 MHz is also available to non-Federal applicants on a secondary basis to the WCS for these same purposes. The following two frequencies are shared on a co-equal basis by Federal stations for telemetering and associated telecommand operations of expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2312.5 and 2352.5 MHz. Other Federal mobile telemetering uses may be provided on a non-interference basis to the above uses. The broadcasting-satellite service (sound) during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5 and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

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US111 In the band 5091–5150 MHz, aeronautical mobile telemetry operations for flight testing are conducted at the following locations. Flight testing at additional locations may be authorized on a case-by-case basis.

Location	Test sites	Lat. (N)	Long. (W)
Gulf Area Ranges Complex (GARC).	Eglin AFB, Tyndall AFB, FL; Gulfport ANG Range, MS; Ft. Rucker, Redstone, NASA Marshall Space Flight Center, AL.	30°28′	86°31′
Utah Ranges Complex (URC)	Dugway PG; Utah Test & Training Range (Hill AFB), UT	40°57′	113°05′
Western Ranges Complex (WRC)	Pacific Missile Range; Vandenberg AFB, China Lake NAWS, Pt. Mugu NAWS, Edwards AFB, Thermal, Nellis AFB, Ft. Irwin, NASA Dryden Flight Research Center, Victorville, CA.	35°29′	117°16′
Southwest Ranges Complex (SRC).	Ft. Huachuca, Tucson, Phoenix, Mesa, Yuma, AZ	31°33′	110°18′
Mid-Atlantic Ranges Complex (MARC).	Patuxent River, Aberdeen PG, NASA Langley Research Center, NASA Wallops Flight Facility, MD.	38°17′	76°24′
New Mexico Ranges Complex (NMRC).	White Sands Missile Range, Holloman AFB, Albuquerque, Roswell, NM; Amarillo, TX.	32°11′	106°20′
Colorado Ranges Complex (CoRC).	Alamosa, Leadville, CO	37°26′	105°52′
Texas Ranges Complex (TRC)	Dallas/Ft. Worth, Greenville, Waco, Johnson Space Flight Center/ Ellington Field, TX.	32°53′	97°02′
Cape Ranges Complex (CRC)	Cape Canaveral, Palm Beach-Dade, FL	28°33′	80°34′
Northwest Range Complex (NWRC).	Seattle, Everett, Spokane, Moses Lake, WA; Klamath Falls, Eugene, OR.	47°32′	122°18′
St. Louis	St Louis, MO	38°45′	90°22′
Wichita	Wichita, KS	37°40′	97°26′
Marietta	Marietta, GA	33°54′	84°31′
Glasgow	Glasgow, MT	48°25′	106°32′
Wilmington/Ridley	Wilmington, DE/Ridley, PA	39°49′	75°26′

Location	Test sites	Lat. (N)	Long. (W)
San Francisco Bay Area (SFBA)	NASA Ames Research Center, CA	37°25′	122°03′

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US113 Radio astronomy observations of the formaldehyde line frequencies 4825–4835 MHz and 14.47–14.5 GHz may be made at certain radio astronomy observatories as indicated below:

BANDS TO BE OBSERVED

4 GHz	14 GHz	Observatory
X		National Astronomy and Ionosphere Center (NAIC), Arecibo, PR.
X	X	National Radio Astronomy Observatory (NRAO), Green Bank, WV.
X	X	NRAO, Socorro, NM.
X		Allen Telescope Array (ATA), Hat Creek, CA.
X	X	Owens Valley Radio Observatory (OVRO), Big Pine, CA.
X	X	NRAO's ten Very Long Baseline Array (VLBA) stations (see US131).
X	X	University of Michigan Radio Astronomy Observatory, Stinchfield Woods, MI.
X		Pisgah Astronomical Research Institute, Rosman, NC.

Every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed or mobile services in these bands. Should such assignments result in harmful interference to these observations, the situation will be remedied to the extent practicable.

* * * * *

US139 Fixed stations authorized in the band 18.3–19.3 GHz that remain co-primary under the provisions of 47 CFR 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) may continue operations consistent with the provisions of those sections.

* * * * *

US145 The following unwanted emission power limits from non-geostationary satellite orbit systems in the inter-satellite service (NGSO ISS) transmitting in the band 22.55–23.55 GHz shall apply in any 200 MHz of the passive band 23.6–24 GHz:

(a) Non-Federal licensees holding a valid authorization on [insert effective date of R&O] to operate in this band may continue to operate as authorized, subject to proper license renewal.

(b) For all other NGSO ISS systems, based on the date that complete advance publication information is received by the ITU's Radiocommunication Bureau, the following limits apply:

(1) For information received before January 1, 2020: –36 dBW.

(2) For information received on or after January 1, 2020: –46 dBW.

US156 In the bands 49.7–50.2 GHz and 50.4–50.9 GHz, for earth stations in the fixed-satellite service (Earth-to-space), the unwanted emission power in the band 50.2–50.4 GHz shall not exceed –20 dBW/200 MHz (measured at the input of the antenna), except that the maximum unwanted emission power may be increased to –10 dBW/200 MHz for earth stations having an antenna gain greater than or equal to 57 dBi. These limits apply under clear-sky conditions. During fading conditions, the limits may be exceeded by earth stations when using uplink power control.

US157 In the band 51.4–52.6 GHz, for stations in the fixed service, the unwanted emission power in the band 52.6–54.25 GHz shall not exceed –33 dBW/100 MHz (measured at the input of antenna).

US161 In the bands 81–86 GHz, 92–94 GHz, and 94.1–95 GHz and within the coordination distances indicated below, assignments to allocated services shall be coordinated with the following radio astronomy observatories. New observatories shall not receive protection from fixed stations that are licensed to operate in the one hundred most populous urbanized areas as defined by the U.S. Census Bureau for the year 2000.

(a) Within 25 km of the National Radio Astronomy Observatory's (NRAO's) Very Long Baseline Array (VLBA) Stations:

State	VLBA station	Lat. (N)	Long. (W)
AZ	Kitt Peak	31°57′23″	111°36′45″
CA	Owens Valley	37°13′54″	118°16′37″
HI	Mauna Kea	19°48′05″	155°27′20″
IA	North Liberty	41°46′17″	091°34′27″
NH	Hancock	42°56′01″	071°59′12″
NM	Los Alamos	35°46′30″	106°14′44″
NM	Pie Town	34°18′04″	108°07′09″
TX	Fort Davis	30°38′06″	103°56′41″
VI	Saint Croix	17°45′24″	064°35′01″
WA	Brewster	48°07′52″	119°41′00″

(b) Within 150 km of the following observatories:

State	Telescope and site	Lat. (N)	Long. (W)
AZ	Heinrich Hertz Submillimeter Observatory, Mt. Graham	32°42′06″	109°53′28″

State	Telescope and site	Lat. (N)	Long. (W)
AZ	University of Arizona 12-m Telescope, Kitt Peak	31°57′12″	111°36′53″
CA	Caltech Telescope, Owens Valley	37°13′54″	118°17′36″
CA	Combined Array for Research in Millimeter-wave Astronomy (CARMA)	37°16′43″	118°08′32″
HI	James Clerk Maxwell Telescope, Mauna Kea	19°49′33″	155°28′47″
MA	Haystack Observatory, Westford	42°37′24″	071°29′18″
NM	NRAO's Very Large Array, Socorro	34°04′44″	107°37′06″
WV	NRAO's Robert C. Byrd Telescope, Green Bank	38°25′59″	079°50′23″

Note: Satisfactory completion of the coordination procedure utilizing the automated mechanism, see 47 CFR 101.1523, will be deemed to establish sufficient separation from radio astronomy observatories, regardless of whether the distances set forth above are met.

US197A The band 108–117.975 MHz is also allocated on a primary basis to the aeronautical mobile (R) service (AM(R)S), limited to systems operating in accordance with recognized international aeronautical standards. Such use shall be in accordance with Resolution 413 (Rev. WRC–07). AM(R)S use of the band 108–112 MHz shall be limited to systems composed of ground-based transmitters and associated receivers that provide navigational information in support of air navigation functions in accordance with recognized international aeronautical standards. AM(R)S use of the band 108–117.975 MHz shall not constrain the use of the band 88–108 MHz by stations in the broadcasting service operating in accordance with 47 CFR part 73.

* * * * *

US227 The bands 156.4875–156.5125 MHz and 156.5375–156.5625 MHz are also allocated to the fixed and land mobile services on a primary basis for non-Federal use in VHF Public Coast Station Areas 10–42. The use of these bands by the fixed and land mobile services shall not cause harmful interference to, nor claim protection from, the maritime mobile VHF radiocommunication service.

US228D The use of the bands 161.9625–161.9875 MHz (AIS 1 with center frequency 161.975 MHz) and 162.0125–162.0375 MHz (AIS 2 with center frequency 162.025 MHz) by the maritime mobile service is restricted to Automatic Identification Systems (AIS), except that non-Federal stations in the band 161.9625–161.9875 MHz may continue to operate on a primary basis according to the following schedule: (a) In VHF Public Coast Service Areas (VPCSAs) 1–9, site-based stations licensed prior to November 13, 2006 may continue to operate until expiration of the license term for licenses in active status as of November 13, 2006; and (b) In VPCSAs 10–42, site-based stations licensed prior to March 2, 2009 may continue to operate until March 2, 2024. *See* 47 CFR 80.371(c)(1)(ii) for the definition of VPCSAs.

* * * * *

US334 In the band 17.8–20.2 GHz, Federal space stations in both geostationary (GSO) and non-geostationary satellite orbits (NGSO) and associated earth stations in the fixed-satellite service (FSS) (space-to-Earth) may be authorized on a primary basis. For a Federal GSO FSS network to operate on a primary basis, the space station shall be located outside the arc, measured from east to west, 70–120° West longitude. Coordination between Federal FSS systems and non-Federal space and terrestrial systems operating in accordance with the United States Table of Frequency Allocations is required.

(a) In the sub-bands 17.8–18.3 GHz and 19.3–19.7 GHz, Federal earth stations shall be authorized on a primary basis only in the following areas: Denver, Colorado; Washington, DC; San Miguel, California; and Guam. Prior to the commencement of non-Federal terrestrial operations in these areas, the FCC shall coordinate all applications for new stations and modifications to existing stations with NTIA as specified in 47 CFR 1.924(f), 74.32, and 78.19(f).

(b) In the sub-band 17.8–19.7 GHz, the power flux-density (pfd) at the surface of the Earth produced by emissions from a Federal GSO space station or from a Federal space station in a NGSO constellation of 50 or fewer satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) -115 dB(W/m^2) for angles of arrival above the horizontal plane (δ) between 0° and 5°,

(2) $-115 + 0.5(\delta - 5)$ dB(W/m^2) for δ between 5° and 25°, and

(3) -105 dB(W/m^2) for δ between 25° and 90°.

(c) In the sub-band 17.8–19.3 GHz, the pfd at the surface of the Earth produced by emissions from a Federal space station in an NGSO constellation of 51 or more satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) $-115 - X$ dB(W/m^2) for δ between 0° and 5°,

(2) $-115 - X + ((10 + X)/20)(\delta - 5)$ dB(W/m^2) for δ between 5° and 25°, and

(3) -105 dB(W/m^2) for δ between 25° and 90°; where X is defined as a function of the number of satellites, n, in an NGSO constellation as follows:

For $n \leq 288$, $X = (5/119)(n - 50)$ dB; and

For $n > 288$, $X = (1/69)(n + 402)$ dB.

* * * * *

US338A In the band 1435–1452 MHz, operators of aeronautical telemetry stations are encouraged to take all reasonable steps to ensure that unwanted emission power does not exceed -28 dBW/27 MHz in the band 1400–1427 MHz.

* * * * *

US343 In the mobile service, the frequencies between 1435 and 1525 MHz will be assigned for aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible usage includes telemetry associated with launching and reentry into the Earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects undergoing flight tests. The following frequencies are shared on a co-equal basis with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz.

* * * * *

US401 In the band 17.7–17.8 GHz, Federal earth stations in the fixed-satellite service (space-to-Earth) may be authorized in the Denver, Colorado; Washington, DC; San Miguel, California; and Guam areas on a primary basis. Prior to commencement of operations in these areas, the FCC shall coordinate fixed service applications supporting Multichannel Video Programming Distributors (MVPD) with NTIA.

* * * * *

US475 The use of the band 9300–9500 MHz by the aeronautical radionavigation service is limited to airborne radars and associated airborne beacons. In addition, ground-based radar beacons in the aeronautical

radionavigation service are permitted in the band 9300–9320 MHz on the condition that harmful interference is not caused to the maritime radionavigation service.

US476A In the band 9300–9500 MHz, Federal stations in the Earth exploration-satellite service (active) and space research service (active) shall not cause harmful interference to, nor claim protection from, stations of the radionavigation and Federal radiolocation services.

US482 In the band 10.6–10.68 GHz, the following provisions and urgings apply:

(a) Non-Federal use of the fixed service shall be restricted to point-to-point systems, with each station supplying not more than −3 dBW of transmitter power to the antenna and producing not more than 40 dBW of EIRP. However, licensees holding a valid authorization on [insert effective date of R&O] to operate in this band may continue to operate as authorized, subject to proper license renewal.

(b) In order to minimize interference to the Earth exploration-satellite service (passive) receiving in this band, licensees of stations in the fixed service are urged to: (1) Limit the maximum transmitter power supplied to the antenna to −15 dBW; (2) limit the maximum elevation angle of the antenna main beam to 20°; and (3) employ automatic transmitter power control (ATPC). The maximum transmitter power supplied to the antenna of stations using ATPC may be increased by a value corresponding to the ATPC range, up to a maximum of −3 dBW.

US519 The band 18–18.3 GHz is also allocated to the meteorological-satellite service (space-to-Earth) on a primary basis. Its use is limited to geostationary satellites and shall be in accordance with the provisions of Article 21, Table 21–4 of the ITU *Radio Regulations.*

US532 In the bands 21.2–21.4 GHz, 22.21–22.5 GHz, and 56.26–58.2 GHz, the space research and Earth exploration-satellite services shall not receive protection from the fixed and mobile services operating in accordance with the Table of Frequency Allocations.

US550A In the band 36–37 GHz, the following provisions shall apply:

(a) For stations in the mobile service, the transmitter power supplied to the antenna shall not exceed −10 dBW, except that the maximum transmitter power may be increased to −3 dBW for stations used for public safety and disaster management.

(b) For stations in the fixed service, the elevation angle of the antenna main beam shall not exceed 20° and the transmitter power supplied to the antenna shall not exceed:

(1) −5 dBW for hub stations of point-to-multipoint systems; or

(2) −10 dBW for all other stations, except that the maximum transmitter power of stations using automatic transmitter power control (ATPC) may be increased by a value corresponding to the ATPC range, up to a maximum of −7 dBW.

Non-Federal Government (NG) Footnotes

* * * * *

NG22 The frequencies 156.050 and 156.175 MHz may be assigned to stations in the maritime mobile service for commercial and port operations in the New Orleans Vessel Traffic Service (VTS) area and the frequency 156.250 MHz may be assigned to stations in the maritime mobile service for port operations in the New Orleans and Houston VTS areas.

* * * * *

NG35 Frequencies in the bands 928–929 MHz, 932–932.5 MHz, 941–941.5 MHz, and 952–960 MHz may be assigned for multiple address systems and associated mobile operations on a primary basis.

* * * * *

NG60 In the band 31–31.3 GHz, licensees of stations in the fixed service are urged to limit the maximum elevation angle of the antenna main beam to 20° and to employ automatic transmitter power control.

* * * * *

NG338A In the bands 1390–1395 MHz and 1427–1435 MHz bands, licensees are encouraged to take all reasonable steps to ensure that unwanted emission power does not exceed the following levels in the band 1400–1427 MHz:

(a) For stations of point-to-point systems in the fixed service: −45 dBW/27 MHz.

(b) For stations in the mobile service (except for devices authorized by the FCC for the Wireless Medical Telemetry Service): −60 dBW/27 MHz.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 336(f), 336(h) and 554.

8. Section 74.32 is revised to read as follows:

§ 74.32 Operation in the 17.7–17.8 GHz and 17.8–19.7 GHz bands.

The following exclusion areas and coordination areas are established to minimize or avoid harmful interference to Federal Government earth stations receiving in the 17.7–19.7 GHz band:

(a) No application seeking authority for fixed stations supporting the operations of Multichannel Video Programming Distributors (MVPD) in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service will be accepted for filing if the proposed station is located within 20 km of Denver, CO (39°43′ N, 104°46′ W) or Washington, DC (38°48′ N, 76°52′ W).

(b) Any application for a new station license to provide MVPD operations in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the following areas:

(1) *Denver, CO area:*

(i) Between latitudes 41°30′ N and 38°30′ N and between longitudes 103°10′ W and 106°30′ W.

(ii) Between latitudes 38°30′ N and 37°30′ N and between longitudes 105°00′ W and 105°50′ W.

(iii) Between latitudes 40°08′ N and 39°56′ N and between longitudes 107°00′ W and 107°15′ W.

(2) *Washington, DC area:*

(i) Between latitudes 38°40′ N and 38°10′ N and between longitudes 78°50′ W and 79°20′ W.

(ii) Within 178 km of 38°48′ N, 76°52′ W.

(3) *San Miguel, CA area:*

(i) Between latitudes 34°39′ N and 34°00′ N and between longitudes 118°52′ W and 119°24′ W.

(ii) Within 200 km of 35°44′ N, 120°45′ W.

(4) *Guam area:* Within 100 km of 13°35′ N, 144°51′ E.

Note to § 74.32: The coordinates cited in this section are specified in terms of the ''North American Datum of 1983 (NAD 83).''

PART 78—CABLE TELEVISION RELAY SERVICE

9. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066,

1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

10. Section 78.19 is amended by revising paragraph (f) to read as follows:

§ 78.19 Interference.

* * * * *

(f) *17.7–19.7 GHz band.* The following exclusion areas and coordination areas are established to minimize or avoid harmful interference to Federal Government earth stations receiving in the 17.7–19.7 GHz band:

(1) No application seeking authority to operate in the 17.7–19.7 GHz band will be accepted for filing if the proposed station is located within 50 km of Denver, CO (39°43′ N, 104°46′ W) or Washington, DC (38°48′N, 76°52′ W).

(2) Any application seeking authority for a new fixed station license supporting the operations of Multichannel Video Programming Distributors (MVPD) in the 17.7–17.8 GHz band or to operate in the 17.8–19.7 GHz band for any service, or for modification of an existing station license in these bands which would change the frequency, power, emission, modulation, polarization, antenna height or directivity, or location of such a station, must be coordinated with the Federal Government by the Commission before an authorization will be issued, if the station or proposed station is located in whole or in part within any of the following areas:

(i) *Denver, CO area:*

(A) Between latitudes 41°30′ N and 38°30′ N and between longitudes 103°10′ W and 106°30′ W.

(B) Between latitudes 38°30′ N and 37°30′ N and between longitudes 105°00′ W and 105°50′ W.

(C) Between latitudes 40°08′ N and 39°56′ N and between longitudes 107°00′ W and 107°15′ W.

(ii) *Washington, DC area:*

(A) Between latitudes 38°40′ N and 38°10′ N and between longitudes 78°50′ W and 79°20′ W.

(B) Within 178 km of 38°48′ N, 76°52′ W.

(iii) *San Miguel, CA area:*

(A) Between latitudes 34°39′ N and 34°00′ N and between longitudes 118°52′ W and 119°24′ W.

(B) Within 200 km of 35°44′ N, 120°45′ W.

(iv) *Guam area:* Within 100 km of 13°35′ N, 144°51′ E.

Note to § 78.19(f): The coordinates cited in this section are specified in terms of the ''North American Datum of 1983 (NAD 83).''

* * * * *

PART 87—AVIATION SERVICES

11. The authority citation for Part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

12. Section 87.5 is amended by adding in alphabetical order a definition for ''flight telemetering mobile station'' to read as follows:

§ 87.5 Definitions.

* * * * *

Flight telemetering mobile station. A telemetering mobile station used for transmitting data from an airborne vehicle, excluding data related to airborne testing of the vehicle itself (or major components thereof).

* * * * *

13. Section 87.133 is amended by revising paragraph (f) to read as follows:

§ 87.133 Frequency stability.

* * * * *

(f) The carrier frequency tolerance of all transmitters operating in the 1435–1525 MHz and 2345–2395 MHz bands is 0.002 percent. The carrier frequency tolerance of all transmitters operating in the 5091–5150 MHz band is 0.005 percent.

* * * * *

14. Section 87.137 is amended by revising note 8 to the table of assignable emissions in paragraph (a) to read as follows:

§ 87.137 Types of emission.

(a) * * *

Notes:

* * * * *

[8] The authorized bandwidth is equal to the necessary bandwidth for frequency or digitally modulated transmitters used in aeronautical telemetering and associated aeronautical telemetry or telecommand stations operating in the 1435–1525 MHz, 2345–2395 MHz, and 5091–5150 MHz bands. The necessary bandwidth must be computed in accordance with part 2 of this chapter.

* * * * *

15. Section 87.139 is amended by revising paragraph (a) introductory text, paragraph (d), and paragraphs (e) introductory text and (f) introductory text to read as follows:

§ 87.139 Emission limitations.

(a) Except for ELTs and when using single sideband (R3E, H3E, J3E), or frequency modulation (F9) or digital modulation (F9Y) for telemetry or telecommand in the 1435–1525 MHz, 2345–2395 MHz, and 5091–5150 MHz bands or digital modulation (G7D) for differential GPS, the mean power of any emission must be attenuated below the mean power of the transmitter (pY) as follows:

* * * * *

(d) Except for telemetry in the 1435–1525 MHz band, when the frequency is removed from the assigned frequency by more than 250 percent of the authorized bandwidth for aircraft stations above 30 MHz and all ground stations the attenuation must be at least 43 + 10 $\log_{10}$pY dB.

(e) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435–1525 MHz, 2345–2395 MHz, or 5091–5150 MHz bands with an authorized bandwidth equal to or less than 1 MHz the emissions must be attenuated as follows:.

* * * * *

(f) When using frequency modulation or digital modulation for telemetry or telecommand in the 1435–1525 MHz, 2345–2395 MHz, or 5091–5150 MHz bands with an authorized bandwidth greater than 1 MHz, the emissions must be attenuated as follows:

* * * * *

16. Section 87.173 is amended by revising the frequency table in paragraph (b) as follows:

a. The entry for the 2310–2320 MHz band is removed.

b. The entry for the 5000–5250 MHz band is removed.

c. An entry for the 5030–5091 MHz band is added.

d. Entries for the 5091–5150 MHz and 24450–24650 MHz bands are added.

The additions read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
*	*	*	*
5030–5091 MHz	Q	MA, RLW	Microwave landing systems.
5031.000 MHz	Q	RLT	
5091–5150 MHz	J	MA, FAT	Aeronautical telemetry.

Frequency or frequency band	Subpart	Class of station	Remarks
* * *	*	*	* * *
24450–24650 MHz	F, Q	MA, RL	Aeronautical radionavigation.
* * *	*	*	* * *

* * * * *

17. Section 87.187 is amended by revising paragraph (p) to read as follows:

§ 87.187 Frequencies.

* * * * *

(p) The 1435–1525 MHz and 2360–2395 MHz bands are available on a primary basis and the 2345–2360 MHz band is available on a secondary basis for telemetry and telecommand associated with the flight testing of aircraft, missiles, or related major components. This includes launching into space, reentry into the Earth's atmosphere and incidental orbiting prior to reentry. In the 1435–1525 MHz band, the following frequencies are shared on a co-equal basis with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz. In the 2360–2395 MHz band, the following frequencies may be assigned for telemetry and associated telecommand operations of expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. See § 87.303(d).

Note to paragraph (p): Aeronautical telemetry operations must protect Miscellaneous Wireless Communications Services operating in the 2345–2360 MHz band.

* * * * *

18. Section 87.303 is amended by revising paragraph (d) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d) Aeronautical mobile telemetry (AMT) operations are conducted in the 1435–1525 MHz, 2345–2395 MHz, and 5091–5150 MHz bands on a co-equal basis with U.S. Government stations.

(1) Frequencies in the 1435–1525 MHz and 2360–2395 MHz bands are assigned in the mobile service primarily for aeronautical telemetry and associated telecommand operations for flight testing of aircraft and missiles, or their major components. The 2345–2360 MHz band is also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and associated telecommand operations associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of objects undergoing flight tests. In the 1435–1525 MHz band, the following frequencies are shared on a co-equal basis with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz. In the 2360–2395 MHz band, the following frequencies may be assigned for telemetry and associated telecommand operations of expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. All other mobile telemetry uses of the 2360–2395 MHz band shall be on a non-interfering and unprotected basis to the above uses.

(2) Frequencies in the 5091–5150 MHz band are assigned in the aeronautical mobile service on a primary basis for flight testing of aircraft. AMT use of these frequencies is restricted to aircraft stations transmitting to aeronautical stations (AMT ground stations) in the flight test areas listed in 47 CFR 2.106, footnote US111.

(3) The authorized bandwidths for stations operating in the 1435–1525 MHz, 2345–2395 MHz, and 5091–5150 MHz bands are normally 1, 3 or 5 MHz. Applications for greater bandwidths will be considered in accordance with the provisions of § 87.135. Each assignment will be centered on a frequency between 1435.5 MHz and 1524.5 MHz, between 2345.5 MHz and 2394.5 MHz, or between 5091.5 MHz and 5149.5 MHz, with 1 MHz channel spacing.

* * * * *

19. Section 87.305 is amended by revising paragraph (a)(1) to read as follows:

§ 87.305 Frequency coordination.

(a)(1) Each application for a new station license, renewal or modification of an existing license concerning flight test frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 320 km (200 mi) of the proposed area of operation and all prior coordination and assignments on the proposed frequency(ies). The committee must also recommend frequencies resulting in the minimum interference. The Committee must coordinate in writing all requests for frequencies or proposed operating changes in the 1435–1525 MHz, 2345–2395 MHz, and 5091–5150 MHz bands with the responsible Government Area Frequency Coordinators listed in the NTIA ''Manual of Regulations and Procedures for Federal Radio Frequency Management.'' In addition, committee recommendations may include comments on other technical factors and may contain recommended restrictions which it believes should appear on the license.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

20. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

21. Section 90.103 is amended by revising the Kilohertz portion of the Radiolocation Service Frequency Table in paragraph (b) and by removing and reserving paragraphs (c)(25) through (28) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation
Kilohertz		
70 to 90	Radiolocation land or mobile	1
90 to 110	Radiolocation land	2
110 to 130	Radiolocation land or mobile	1
1705 to 1715	.....do	4, 5, 6
1715 to 1750	.....do	5, 6
1750 to 1800	.....do	5, 6
3230 to 3400	.....do	6, 8
Megahertz		
* * * * * * *		

* * * * *

PART 97—AMATEUR RADIO SERVICE

22. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

23. Section 97.301 is amended by revising the kHz portion of the tables in paragraphs (b), (c), and (d) to read as follows:

§ 97.301 Authorized frequency bands.

* * * * *

(b) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (g)
* * * * * * *				

(c) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (g)
* * * * * * *				

(d) * * *

Wavelength band	ITU Region 1	ITU Region 2	ITU Region 3	Sharing requirements see § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (g)
* * * * * * *				

* * * * *

24. Section 97.303 is amended by revising paragraphs (c) and (g) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(c) Amateur stations transmitting in the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, or the 241–248 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government, the FCC, or other nations in the radiolocation service.

* * * * *

(g) Amateur stations transmitting in the 160 m band must not cause harmful interference to, and must accept

interference from, stations authorized by other nations as follows:

(1) *In Region 1:* The radiolocation service in the 1800–1810 kHz segment and the fixed and mobile except aeronautical mobile services in the 1850–2000 kHz segment. In the countries listed in footnote 5.93 (of 47 CFR 2.106), the fixed and land mobile services in the 1800–1810 kHz segment, and in the countries listed in footnotes 5.98 and 5.99, the fixed and mobile except aeronautical mobile services in the 1810–1830 kHz segment.

(2) *In Region 2:* The fixed, mobile except aeronautical mobile, radiolocation, and radionavigation services in the 1850–2000 kHz segment.

(3) *In Region 3:* The fixed, mobile except aeronautical mobile, and radionavigation services.

* * * * *

[FR Doc. 2012–31049 Filed 12–26–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 77, No. 248

Thursday, December 27, 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 COMMERCE

International Trade Administration

[A–201–842]

Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We determine that imports of large residential washers (washers) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled ''Final Determination Margins.''

DATES: *Effective Date:* December 27, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2012, the Department published in the **Federal Register** the preliminary determination of sales at LTFV in the antidumping duty investigation of washers from Mexico.[1] Since the preliminary determination, the following events have occurred.

On August 24, 2012, Whirlpool Corporation (hereafter, the petitioner) requested a hearing. On September 4, 2012, the respondent, Electrolux Home Products, Corp. NV/Electrolux Home Products De Mexico, S.A. de C.V. (hereafter, Electrolux), also requested a hearing.

On August 31, 2012, the petitioner formally filed a request to amend the petition to exclude smaller top-load washers from the scope of this investigation.

In August and September 2012, we verified the questionnaire responses of Electrolux, in accordance with section 782(i) of the Act.

In response to the Department's October 15, 2012, request, Electrolux submitted revised sales databases incorporating the Department's sales verification report findings on October 22 and 24, 2012.

On October 17, 2012, Electrolux submitted its case brief, and on October 24, 2012, the petitioner submitted its rebuttal brief. Also, on October 24, 2012, the petitioner withdrew its request for a hearing in this case. Similarly, on October 26, 2012, Electrolux withdrew its request for a hearing.

Period of Investigation

The period of investigation (POI) is October 1, 2010, through September 30, 2011.

Scope of Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Mexico.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[2] designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets[3] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[4] (b) a base; and (c) a drive hub;[5] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics;[6] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[7] *or*

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such

[1] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers from the Republic of Korea,* 77 FR 46401 (August 3, 2012) (*Preliminary Determination*).

[2] A ''tub'' is the part of the washer designed to hold water.

[3] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[4] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[5] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[6] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[7] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

that, in normal operation,[8] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this investigation are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this investigation may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Scope Comments

On May 17, 2012, the petitioner requested that the Department exclude smaller top-load washers (*i.e.,* automatic washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet) from the scope of this investigation and the concurrent antidumping (AD) and countervailing duty (CVD) investigations of washers from Korea. Subsequently, we received comments from Samsung Electronics Co., Ltd and LG Electronics Inc. (LG), respondents in the AD and CVD investigations of washers from Korea, objecting to the petitioner's scope exclusion request, and comments from other interested parties supporting the request.

Based on our evaluation of these comments, the briefs which were subsequently filed by LG and the petitioner, and the information provided by U.S. Customs and Border Protection (CBP), we have amended the scope to exclude smaller top-load washers. For a complete discussion of the Department's scope determination, see Memorandum from the Team to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, ''Exclusion of Top-Load Washing Machines with a Rated Capacity Less than 3.70 Cubic Feet from the Scope of the Investigations,'' dated July 27, 2012, and ''Issues and Decision Memorandum for the Antidumping Duty Investigation of Large Residential Washers from Mexico'' from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), dated concurrently with this notice and incorporated herein by reference.

LG requested on July 27, 2012, that larger-width washers (*i.e.,* washers with widths of 29 inches or greater) be excluded from the scope of the investigations. The petitioner objected to this request on August 27, 2012. Based on our evaluation of the parties' comments, as discussed in their briefs, we find that larger-width washers should not be excluded from the scope. *See* Issues and Decision Memorandum for further discussion.

Application of Facts Available

In the *Preliminary Determination,* we determined that due to Samsung and Whirlpool's complete lack of cooperation in this investigation, in accordance with section 776(a)(2) of the Act, the use of facts available was appropriate as the basis for the dumping margin for both Samsung and Whirlpool. *See Preliminary Determination,* 77 FR at 46403. Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided in section 782(i) of the Act.

In this case, neither Samsung nor Whirlpool responded to the Department's questionnaire by the established deadline nor did either company request an extension of time to submit its response. By failing to participate in this investigation, Samsung and Whirlpool withheld requested information, failed to provide information with the deadlines established, and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, because Samsung and Whirlpool did not participate in this investigation, the Department continues to find that the use of total facts available is warranted.

In the *Preliminary Determination,* we also determined that the application of an adverse inference to Samsung and Whirlpool was warranted pursuant to section 776(b) of the Act. *See Preliminary Determination,* 77 FR at 46403. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [9] Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' [10] For purposes of this final determination, we continue to find that Samsung and Whirlpool did not act to the best of their ability in this proceeding, within the meaning of section 776(b) of the Act, because each failed to participate in this investigation. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to Samsung and Whirlpool.

The Department's practice, when selecting an adverse facts available (AFA) rate from among the possible sources of information, has been to select the highest rate on the record of the proceeding and to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [11]

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned to Samsung and Whirlpool a rate of 72.41 percent, which is the highest rate

[8] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[9] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (*SAA*), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99.

[10] *See Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

[11] *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082, 65084 (November 7, 2006).

alleged in the petition (as adjusted at initiation).[12] The Department believes that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.,* we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act). As discussed below, we have also corroborated this rate, and determined that it is both reliable and relevant.

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.[13] The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published prices lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation and to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this final determination.[14] We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this final determination. During our pre-initiation analysis we examined the key elements of the U.S. price and normal value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent sources provided either in the petition or in supplements to the petition that corroborates key elements of the U.S. price and normal value calculations used in the petition to derive estimated margins.[15]

Based on our examination of the information, as discussed in detail in the Initiation Checklist, *Initiation Notice,* and *Preliminary Determination,* we consider the petitioner's calculation of the U.S. price and normal value underlying the 72.41 percent rate to be reliable. Therefore, because we confirmed the accuracy and validity of the information underlying the calculation of margins in the petition by examining source documents as well as publicly available information, we determine that the 72.41 percent margin in the petition is reliable for purposes of this investigation.

With respect to the relevance aspect of corroboration, as in the *Preliminary Determination,* we also considered information reasonably at our disposal to determine whether a margin continues to have relevance. We found that the 72.41 percent rate in the petition reflects the commercial practices of the large residential washer industry and, as such, is relevant to Samsung and Whirlpool. In making this determination, we compared the model-specific margins we calculated for Electrolux for the POI to the petition rate of 72.41 percent. We found that the highest model-specific margins we calculated for Electrolux in this investigation were higher than or within the range of the 72.41 percent margin alleged in the petition.

Specifically, after calculating the margin for Electrolux as discussed below, we examined individual model comparisons and the margins we calculated based on those model comparisons in order to determine whether the rate of 72.41 percent is probative. We found a number of model comparisons with dumping margins above the rate of 72.41 percent, and a number of model comparisons with dumping margins within the range of 72.41 percent. Accordingly, we determine that the AFA rate is relevant as applied to Samsung and Whirlpool for this investigation because it falls within the range of model-specific margins we calculated for Electrolux in this investigation.[16]

Based on the foregoing analysis, we have determined that the AFA rate of 72.41 percent has probative value and is corroborated ''to the extent practicable'' as provided in section 776(c) of the Act. *See* also 19 CFR 351.308(d).[17]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to Electrolux's margin calculation. For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by Electrolux for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Electrolux.[18]

[12] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012) (*Initiation Notice*).

[13] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and partial Termination of Administrative Reviews,* 62 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997)).

[14] *See* Antidumping Investigation Initiation Checklist dated January 19, 2012 (Initiation Checklist), at 6 through 11. *See* also *Initiation Notice,* 77 FR at 4010–4011.

[15] *Id.*

[16] This corroboration methodology is consistent with our past practice. (*See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808, 41811 (July 19, 2010)). A similar corroboration methodology has been upheld by the Court of Appeals for the Federal Circuit. (*See PAM S.p.A.* v. *United States,* 582 F.3d 1336, 1340 (Fed. Cir. 2009).)

[17] *See Preliminary Determination,* 77 FR at 46405.

[18] *See* Memorandum to the File entitled ''Verification of the Cost Response of Electrolux Home Products, Corp. N.V. and Electrolux Home Products, Inc. (collectively ''Electrolux'') in the Antidumping Investigation of Large Residential Washers from Mexico,'' dated September 10, 2012; and Memorandum to the File entitled ''Verification of the Sales Response of Electrolux Home Products,

Targeted Dumping

The Act allows the Department to employ the average-to-transaction comparison methodology under the following circumstances: (1) There is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. *See* section 777A(d)(1)(B) of the Act.

For purposes of the final determination, we performed our targeted dumping analysis following the methodology employed in the *Preliminary Determination,* after making certain revisions to Electrolux's reported U.S. sales data based on verification findings, as enumerated in the ''Margin Calculations'' section of the Issues and Decision Memorandum. In so doing, we found that the results of our final targeted dumping analysis were generally consistent with those of our preliminary targeted dumping analysis. Therefore, we continued to apply the average-to-average method to all of Electrolux's U.S. sales in the final determination. *See* the Memorandum to the File entitled ''Final Determination Margin Calculation for Electrolux Home Products Corp., N.V./Electrolux Home Products De Mexico, S.A. de C.V. (collectively ''Electrolux''),'' dated concurrently with this notice for further discussion.

Continuation of Suspension of Liquidation

Pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Mexico, entered, or withdrawn from warehouse, for consumption on or after August 3, 2012, the date of publication of the preliminary determination in the **Federal Register**. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Electrolux Home Products Corp. NV/Electrolux Home Products De Mexico, S.A. de C.V.	36.52
Samsung Electronics Mexico S.A. de C.V.	72.41
Whirlpool International S. de R.L. de C.V.	72.41
All Others	36.52

In accordance with section 735(c)(5)(A) of the Act, the ''All Others'' rate is derived exclusive of all *de minimis* or zero margins and margins based entirely on adverse facts available. Specifically, this rate is based on the margin calculated for Electrolux in this case.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: December 18, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues

1. Scope Exclusion of Smaller Top-Load Washers
2. Request To Exclude Larger-Width Washers From the Scope

Company-Specific Issue

3. Electrolux's Affiliated Party Transactions

[FR Doc. 2012–31077 Filed 12–26–12; 8:45 am]

BILLING CODE 3510–DS–P

Corp. N.V. and Electrolux Home Products, Inc. (collectively ''Electrolux'') in the Antidumping Duty Investigation of Large Residential Washers from Mexico, dated October 9, 2012 (sales verification report).

BUREAU OF CONSUMER FINANCIAL PROTECTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting comments concerning its proposed information collection titled, ''Clearance for Consumer Attitudes, Understanding, and Behaviors with Respect to Financial Services and Products.'' The proposed collection has been submitted to the Office of Management and Budget (OMB) for review and approval. A copy of the submission, including copies of the proposed collection and supporting documentation, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before January 28, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by agency name and ''Clearance for Consumer Attitudes, Understanding, and Behaviors with Respect to Financial Services and Products'' to:

- *Agency:* Consumer Financial Protection Bureau (Attention: PRA

Office), 1700 G Street NW., Washington, DC 20552; (202) 435–9011; and *CFPB_Public_PRA@cfpb.gov*.

• *OMB:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011, or through the Internet at *CFPB_Public_PRA@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

Title: Clearance for Consumer Attitudes, Understanding, and Behaviors with Respect to Financial Services and Products.

OMB Control Number: 3170–XXXX.

Type of Review: New.

Abstract: This proposed information collection will help the Consumer Financial Protection Bureau (CFPB) establish a public opinion survey to measure and track consumer attitudes, beliefs, and behaviors as they navigate financial decisions. It will help the CFPB target its efforts and those of its partners to those areas that will have the most impact on both consumers and financial markets.

Affected Public: Individuals and Households.

Estimated Number of Responses: 2,500.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 833.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The Bureau issued a 60-day **Federal Register** notice on March 28, 2012 (77 FR 18795). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 17, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–31138 Filed 12–26–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0072]

Agency Information Collection Activities; Comment Request; Regulations for Equity in Athletics Disclosure Act (EADA)

AGENCY: The Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before February 28, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0072 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Regulations for Equity in Athletics Disclosure Act (EADA).

OMB Control Number: 1840–0827.

Type of Review: An extension of an existing information collection of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 2,074.

Total Estimated Number of Annual Burden Hours: 11,407.

Abstract: The Equity in Athletics Disclosure Act (EADA), found in section 485 of the Higher Education Act of 1965 (HEA), as amended, and its implementing regulations (34 CFR 668.41 and 34 CFR 668.47) require coeducational institutions that participate in the Title IV, HEA federal student aid programs and that have an intercollegiate athletic program to annually prepare a report on athletic participation, staffing, revenue and expenditures by gender, and by men's and women's teams. An institution must make the report available to students, potential students, and the public upon request. An institution must also report the data to the Department of Education and the Department makes the information publicly available on its Web site.

Dated: December 20, 2012.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–31097 Filed 12–26–12; 8:45 am]

BILLING CODE 4000–01–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Modified Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The U.S. Office of Government Ethics (OGE) is publishing this first round notice and seeking comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OGE is proposing minor changes to update these forms.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received on or before February 25, 2013.

ADDRESSES: You may submit comments to OGE on this paperwork notice by any of the following methods:

Email: usoge@oge.gov. (Include reference to ''Qualified trust model certificates and model trust documents paperwork comment'' in the subject line of the message).

FAX: 202–482–9237.

Mail, Hand Delivery/Courier: U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Paul D. Ledvina, Agency Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Ledvina at the U.S. Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–237; Email: *pledvina@oge.gov.* The model Certificate of Independence and model Certificate of Compliance for qualified trusts are codified in appendixes A and B to 5 CFR part 2634. Appendix C of 5 CFR 2634 provides the Privacy Act Statement for the model certificates. Copies of the proposed modified qualified trust model certificates and the model trust documents may be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics intends to submit, after this first round notice and comment period, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and the agencies. The current paperwork approval for the model certificates and model trust documents, last granted by OMB in 2010, is scheduled to expire at the end of February 2013. OGE is proposing minor changes to the twelve qualified trust certificates and model documents at this time. The proposed non-substantive changes will update information in the forms to reflect OGE's recent amendments to the executive branch regulation regarding qualified trusts in subparts D, E, and Appendixes A and B of 5 CFR part 2634. See 77 FR 39123–39150 (July 2, 2012). Other changes will update agency telephone and FAX contact numbers, and provide an updated Privacy Act Statement on the model trust documents reflecting changes made to the OGE/GVT–1 System of Records 2003–2012. See 68 FR 3097–3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003), 76 FR 24489–24490 (May 2, 2011) and 77 FR 45353 (July 31, 2012). However, these Privacy Act updates to OGE/GVT–1 have not been incorporated into the current version of the Privacy Act Statement, 5 CFR part 2634 appendix C, covering the Certificate of Independence and Certificate of Compliance, 5 CFR part 2634 appendixes A and B. OGE will continue to inform users of the certificates of the updates to the Privacy Act Statement.

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (EIGA). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.404(f), 2634.407(a), 2634.408(a)–(c), 2634.407 and 2634.414 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper request under EIGA (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the OGE Form 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR

2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The U.S. Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2013–2016. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2009 (74 FR 47799–47801 (September 17, 2009) and 74 FR 62780–62782 (December 1, 2009)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: Total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: Total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next two years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

Public comment is invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: December 20, 2012.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2012–31140 Filed 12–26–12; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–18280–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0308, which expires on June 30, 2013. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before February 25, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–18280–60D for reference.

Information Collection Request Title: The Effect of Reducing Falls on Acute and Long-Term Care Expenses

OMB No.: 0990–0308.

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) within the HHS Office of Secretary is conducting a demonstration and evaluation of a multi-factorial fall prevention program to measure its impact on health outcomes for the elderly as well as acute and long-term care use and cost. The study is being conducted among a sample of individuals with private long-term care insurance who are age 75 and over using a multi-tiered random experimental

research design to evaluate the effectiveness of the proposed fall prevention intervention program. The project began in Spring 2008 and is expected to be completed in December 2014.

Need and Proposed Use of the Information: The project will provide information to advance Departmental goals of reducing injury and improving the use of preventive services to positively impact Medicare use and spending.

Likely Respondents: Adults age 75 or older.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Initial Telephone Screen	Active Control Group (ACG)/Experimental Group (EG).	835	1	20 minutes	278
In-person interview	EG	435	1	1.25 hours	544
Jump start phone call	EG	435	1	30 minutes	218
Quarterly phone calls	ACG/EG	835	4	10 minutes	556
Final Telephone Screen	ACG/EG	167	1	20 minutes	56
Final In-person interview	EG	167	1	1.25	209
Total					1861

OS specifically requests comments on (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.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2012–31113 Filed 12–26–12; 8:45 am]

BILLING CODE 4150–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Directory of New Hires.

OMB No.: 0970–0166.

Description: The National Directory of New Hires (NDNH), an automated directory maintained by the Federal Office of Child Support Enforcement, was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 42 U.S.C. 653(i)(1). In accordance with Section 453A(g)(2) of the Social Security Act, employers are required to report information pertaining to newly hired employees to their state directory of new hires (SDNH) and, within three days of receiving employer information, states are required to transmit SDNH information to the NDNH. States are also required to transmit wage and unemployment compensation claims information to the NDNH on a quarterly basis. Federal Agencies are required to report new hires and quarterly wage information directly to the NDNH.

The information maintained in the NDNH is collected electronically and is used to assist states in administering child support programs, assisting child support agencies in locating parents, and enforcing child support orders. Additionally, Congress has authorized specific state and federal agencies to receive NDNH information for authorized purposes to assist in administering certain programs.

Respondents: Employers, State Child Support Enforcement Agencies, and State Workforce Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Reporting Manually	5,294,970	1.98	.025 hours (1.5 minute)	262,101.02
New Hire: Employers Reporting Electronically	635,162	76.40	.00028 hours (1 second)	13,587.39
New Hire: States	54	193,947.41	.016667 hours (1 minute)	174,556.16
QW & UI	53	27.00	.00028 hours (1 second)	0.40
Multistate Employer Form	4,632	1.00	.050 hours (3 minutes)	231.60
Estimate Total Annual Burden Hours				450,477

Estimated Total Annual Burden Hours: 450,477 hours.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–31116 Filed 12–26–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: February 4, 2013.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Acquired Immunodeficiency Syndrome Subcommittee.

Date: February 4, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Microbiology and Infectious Diseases Subcommittee.

Date: February 4, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Allergy, Immunology and Transplantation Subcommittee,

Date: February 4, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 3, 2013.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health,Natcher Building,Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 3, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Microbiology and Infectious Diseases Subcommittee.

Date: June 3, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Allergy, Immunology and Transplantation Subcommittee.

Date: June 3, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 16, 2013.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 16, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Microbiology and Infectious Diseases Subcommittee.

Date: September 16, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council: Allergy, Immunology and Transplantation Subcommittee.

Date: September 16, 2013.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Any interested person may file written comments with the committee by forwarding the Statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 19, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31070 Filed 12–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee (DSR).

Date: February 21–22, 2013.

Time: 8:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel by Hilton, 1515 Rhode Island Ave. NW., Washington, DC 20010.

Contact Person: Rebecca Wagenaar-Miller, Ph.D., Scientific Review Officer, 6701 Democracy Blvd., Room 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review of K, F, R03, and R13 applications.

Date: February 27, 2013.

Time: 11:15 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raj K. Krishnaraju, Ph.D., MS, Scientific Review Officer, Scientific

Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Room 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 20, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31069 Filed 12–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee NIA–B.

Date: February 7–8, 2013.

Time: 5:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building, 2C212, 201 Wisconsin Avenue Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: *December 20, 2012.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31072 Filed 12–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis.

Date: January 23–24, 2013.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Urology.

Date: January 23, 2013.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bonnie L. Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Hepatobiliary Pathophysiology.

Date: January 23, 2013.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter J. Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–246: Translational Research in Pediatric and Obstetric Pharmacology.

Date: January 23, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: January 24–25, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 20, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31074 Filed 12–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Datasets in Aging.

Date: February 1, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda—Washington DC, 8120 Wisconsin Avenue Bethesda, MD 20814.

Contact Person: Alfonso R. Latoni, Ph.D., Deputy Chief and Scientific Review, Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; 2013 Beeson Review.

Date: February 15, 2013.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: DoubleTree by Hilton Hotel Bethesda—Washington DC, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Parsadanian, Ph.D. Scientific Review Officer, National Institute on Aging, Gateway Building, 2C/212, 7201 Wisconsin Avenue Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 20, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–31073 Filed 12–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–1058]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet via teleconference to review and discuss draft recommendations from TSAC subcommittees on assigned tasks listed in the **SUPPLEMENTARY INFORMATION** section below. The committee will also discuss potential new tasks related to development of manning policy for towing vessels operating on international and domestic waters, information transfer between vessels using the automatic identification system (AIS), and plans to improve Coast Guard Form 2692 for reporting a marine accident, injury or death. This meeting will be open to the public.

DATES: The teleconference meeting will take place on Wednesday, January 16, 2013, from 10 a.m. to 4 p.m. EST. This meeting may end early if all business is finished before 4 p.m. If you wish to make oral comments at the meeting, simply notify Mr. William J. Abernathy before the meeting, as specified in the **ADDRESSES** section, or the designated Coast Guard staff at the meeting. If you wish to submit written comments or make a presentation, submit your comments or request to make a presentation by January 7, 2013.

ADDRESSES: The Committee will meet via teleconference. To participate by phone, contact the Alternate Designated Federal Officer (ADFO) listed below in the **FOR FURTHER INFORMATION CONTACT** section to obtain teleconference information. Note the number of teleconference lines is limited and will be available on a first-come, first-served basis. To join those participating in this teleconference from U.S. Coast Guard Headquarters, come to Room 2501, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593. You must present a valid, government-issued photo identification to gain entrance to the Coast Guard Headquarters building.

If you want to make an presentation, send your request by January 7, 2012, to Mr. William J. Abernathy, TSAC ADFO, telephone 202–372–1363, Commandant (CG–OES–2), 2100 Second Street SW., Stop 7126, Washington, DC 20593–7126 or by fax to 202–372–1926. To facilitate public participation we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit a written comment on or before January 7, 2013 or make an oral comment during the public comment portion of the meeting.

To submit a comment in writing, use one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Email: William.J.Abernathy@uscg.mil* Include the docket number (USCG–2012–1058) on the subject line of the message.
- *Fax:* (202) 372–1926 Include the docket number (USCG–2012–1058) on the subject line of the fax.
- *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.
- *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 202–366–9239.

Instructions: Include the words ''Department of Homeland Security'' and the docket number of this notice in your submission. All comments submitted will be posted on *www.regulations.gov* without alteration and will contain personal information you provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this TSAC meeting, *go to www.regulations.gov*, insert ''USCG–2012–1058'' in the ''Search'' box and then click ''Search.''

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, USCG, TSAC Designated Federal Officer (DFO), telephone 202–372–1410, fax 202–372–1926, email *Robert.L.Smith@uscg.mil* or Mr. William J. Abernathy, Alternate Designated Federal Officer (ADFO), telephone 202–372–1363, fax 202–372–1926, email *William.J.Abernathy@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: We are publishing this meeting notice under provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). The Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. See 33 U.S.C. 1231a.

Agenda of Meeting

The agenda for January 16, 2013 includes:

(1) Presentation and discussion of reports by the subcommittees:

(a) Prevention of Crewmember Falls Overboard (Task Statement 12–01),

(b) Voluntary Entry-Level Training Standards on Towing Vessels (Task Statement 12–02),

(c) Enhancement of Towing Vessel Operational Stability (Task Statement 12–03),

(d) Standards for Mobile Vapor Control Systems (Task Statement 12–04), and

(e) Review of Fire Casualties onboard Towing Vessels (Task Statement 12–05).

(2) Receive new tasking in the following areas:

(a) Development of manning policy for towing vessels operating on international and domestic waters,

(b) Information transfer between vessels using the Automatic Identification System (AIS), and

(c) Plans to improve Coast Guard Form 2692, REPORT OF MARINE ACCIDENT, INJURY OR DEATH.

(3) Public comment.

Public Participation

We have scheduled the last hour of the meeting, from 3 to 4 p.m., for oral comments from the public. If you wish to make an oral comment, please contact Mr. William J. Abernathy, listed in the **FOR FURTHER INFORMATION CONTACT** section, either before the meeting or at the meeting when the members of the audience are requested to state their interest in commenting. We request that you limit your oral comments to 3 minutes. Please note that this public comment period may start before 3 p.m. if all other agenda items have been covered and may end before 4 p.m. if all of those wishing to comment have done so.

As indicated in the **DATES** and **ADDRESSES** sections, please contact Mr. Abernathy by January 7, 2013, if you wish to make a presentation. If you want to submit a written comment, please do so by January 7, 2013 using one of the methods indicated in the **ADDRESSES** section.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

Minutes

Minutes from the meeting will be available for public review and copying within 30 days following the meeting at the *http://fido.gov/facadatabase/public.asp* Web site. The meeting minutes may be accessed via this Web site by clicking ''Explore Data'' and typing ''704'' in the ''Committee Quick Find'' box. Once you have accessed the Committee page, click on the meetings tab and then the ''View'' button for the meeting dated January 16, 2013, to access the information for this meeting. Minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil/tsac*

Dated: December 20, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–31135 Filed 12–26–12; 8:45 am]

BILLING CODE 9110–04–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–10]

Recommendations To Modify Chapters 29, 30, 37, and 85 of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation, proposed recommendations, and procedures to be followed.

SUMMARY: The United States International Trade Commission (Commission) is instituting investigation No. 1205–10 for the purpose of making recommendations to the President with respect to modifying provisions of chapters 29, 30, 37, and 85 of the Harmonized Tariff Schedule of the United States (HTS). The goods involved include certain sensitized photographic film, video game console controllers, and chemical compounds. The Commission's proposed recommendations follow as an annex to this notice.

DATES:

February 22, 2013: Deadline for filing written views on proposed Commission recommendations.

April 24, 2013: Transmittal of report to the President containing Commission recommendations.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC 20436. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leaders David G. Michels (202–205–3440 or *david.michels@usitc.gov*) or Janis L. Summers (202–205–2605 or *janis.summers@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

BACKGROUND: Section 1205(a) of the 1988 Act (19 U.S.C. 3005(a)) requires that the Commission keep the HTS under continuous review and periodically recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish five general objectives, including to conform the Harmonized Tariff Schedule with amendments made to the Harmonized System Convention (to which the United States is a signatory) and to promote the uniform application of the Harmonized System Convention and particularly the Annex [Protocol] thereto, which contains the HS nomenclature structure and accompanying legal notes and rules. Section 1205(b)-(c) sets out procedures that the Commission must follow in making and reporting recommendations, including to provide notice of proposed recommendations to interested parties and provide such parties with an opportunity to present their views in writing. Section 1205(d) sets forth certain requirements regarding the recommendations the Commission is authorized to make to the President.

The Commission is publishing its proposed recommendations in this investigation in the annex attached to this notice. Interested parties will have until February 22, 2013, to present their views in writing. See further instructions below relating to the time, place, and form for filing written views, including requirements relating to the submission of any confidential business information.

The modifications being considered by the Commission at this time fall into two categories. The first category concerns modifications to two HTS chapters inadvertently omitted from Commission consideration when the Commission submitted a report to the President in June 2010 in investigation No. 1205–7, *Proposed Modifications to the Harmonized Tariff Schedule of the United States,* USITC Publication 4166). That investigation involved more than 200 amendments to the HS recommended by the WCO to be made effective on January 1, 2012. Most of the changes recommended by the WCO were made effective for the United States on February 3, 2012, pursuant to Proclamation 8771 of December 29,

2011 (see annexes thereto published in USITC Publication 4276, December 2011). This first category of modifications involves the following goods:

(1) Inserting three new HS 6-digit subheadings for sensitized, unexposed photographic film in rolls from HTS chapter 37, and

(2) Providing specifically for cordless video game console controllers which use infrared transmissions to operate or access the various functions and capabilities of the console in a duty-free tariff rate line in chapter 85, following the insertion of a new legal note in chapter 95 that excludes these goods from chapter 95.

The second category of modifications involves certain chemical products that are either incorrectly named or incompletely described in terms of the chemicals nomenclature of the HS, and others that are specified under HTS rate lines that do not cover such products. Based on information about their structure and characteristics supplied by interested firms, the possible modifications are intended to ensure that the affected products can be correctly classified and named in the HS/HTS structure. The Commission is seeking input from other federal agencies and the public to ensure that no duty rate changes on imported goods would result if the following modifications are proclaimed:

(1) ''1,6-hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate)'' would be removed from HTS subheading 2918.99.05 and inserted into subheading 2918.29.04;

(2) ''4,4′-Methylenebis(3-chloro-2,6-diethylaniline); 4,4′-Methylenebis(2,6-diisopropylaniline)'' would be removed from subheading 2921.42.36 and inserted into subheading 2921.59.17;

(3) Subheading 2933.99.87 would be deleted and its product coverage and rates of duty would be inserted as new subheading 2933.69.50;

(4) A technical correction in the chemical name of the sole product provided for in subheading 2934.31.18 would be made, deleting from the current description ''4,1'' and inserting in lieu thereof ''yl'';

(5) The chemical ''3-Methylene-7-(2-phenoxyacetamido)-cephan-4-carboxylic acid, p-nitrobenzyl ester, 1-oxide'' would be deleted from subheading 2934.99.03;

(6) The chemical ''2-Methyl-2,5-dioxo-1-oxa-2-phospholan'' would be deleted from subheading 2934.99.70; and

(7) The words ''modified or'' would be inserted after ''not'' in subheading 3002.10.02.

Information currently available to the Commission indicates that the duty rates for the goods involved in the investigation would not be affected by the proposed modifications. Input from other federal agencies and the public is sought to confirm that no duty rate changes on imported goods would result if the modifications contained in the proposed recommendations are proclaimed. Copies of liquidated customs entries, with confidential information redacted, should be filed with any submission asserting that a previously imposed duty rate would change if the proposed recommended modifications are proclaimed.

WRITTEN SUBMISSIONS: Written submissions expressing the views of interested parties on the proposed Commission recommendations should be addressed to the Secretary, and should be received not later than 5:15 p.m., February 22, 2013. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 noon eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the confidential or non-confidential version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.
Issued: December 20, 2012.

Lisa R. Barton,
Acting Secretary to the Commission.

Proposed Recommendations for Modifications to the Harmonized Tariff Schedule of the United States

Proposed recommendations for modifications to the Harmonized Tariff Schedule of the United States (HTS) that were recommended by the WCO, with bracketed material inserted for ease of use and with new material inserted in the HTS columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively:

37–1. Subheadings 3702.91.01 through 3702.95.00 are deleted, and the following new subheadings are inserted in lieu thereof:

[Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed:]

[Other:]

''3702.96.00	Of a width not exceeding 35 mm and of a length not exceeding 30 m.	3.7%	Free (A,AU,BH,CA,CL,CO,E,IL,J,JO,KR,MA, MX,OM,P,PA,PE,SG).	25%
3702.97.00	Of a width not exceeding 35 mm and of a length exceeding 30 mm.	.....	Free	38¢/m^2
3702.98.00	Of a width exceeding 35 mm	3.7%	Free (A,AU,BH,CA,CL,CO,E,IL,J,JO,KR,MA, MX,OM,P,PA,PE,SG).	25%''

85–1. Subheading 8543.70.92 is redesignated as subheading 8543.70.93, and the article description of such redesignated subheading is modified by inserting at the end thereof the language ''; cordless video game console controllers which use infrared transmissions to operate or access the various functions and capabilities of the console''.

Proposed recommendations for modifications to the HTS relating to

chemicals products in the current HTS (these chemical descriptions have also appeared in previous editions of the HTS), with bracketed material inserted for ease of use and with new material inserted in the HTS columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively:

29–1. (a) Subheading 2918.99.05 is modified by deleting from the article description the chemical ''1,6-hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate)''; and

(b) Subheading 2918.29.04 is modified by inserting in the article description in alphabetical order the chemical ''1,6-hexanediol bis(3,5-dibutyl-4-hydroxyphenyl)propionate)''.

29–2. (a) Subheading 2921.42.36 is modified by deleting from the article description the chemical ''4,4′-Methylenebis(3-chloro-2,6-diethylaniline); 4,4′-Methylenebis(2,6-diisopropylaniline);''; and

(b) Subheading 2921.59.17 is modified by inserting in the article description in alphabetical sequence the chemicals ''4,4′-Methylenebis(3-chloro-2,6-diethylaniline);'' and

''4,4′-Methylenebis(2,6-diisopropylaniline);''

29–3. (a) Subheading 2933.99.87 is deleted; and

(b) The following new subheading 2933.69.50 is inserted in numerical sequence:

[Heterocyclic compounds with nitrogen heteroatoms only:]

[Compounds containing an unfused triazine ring (whether or not hydrogenated) in the structure:]

''2933.69.50	Hexamethylenetetramine	6.3%	Free (A,AU,BH,CA,CL,CO,E,IL,J,JO,MA,MX,OM, P,PA,PE,SG) 4.2% (KR).	58%''

Note: Previously proclaimed staged reductions in duty under the United States-Korea Free Trade Agreement for subheading 2933.99.87 would be applied to this provision.

29–4. Subheading 2934.31.18 is modified by deleting from the article description the language ''4,1'' and by inserting ''yl'' in lieu thereof.

29–5. Subheading 2934.99.03 is modified by deleting from the article description the chemical ''3-Methylene-7-(2-phenoxyacetamido)-cephan-4-carboxylic acid, p-nitrobenzyl ester, 1-oxide''.

29–6. Subheading 2934.99.70 is modified by deleting from the article description the chemical ''2-Methyl-2,5-dioxo-1-oxa-2-phospholan;''.

30–1. Subheading 3002.10.02 is modified by inserting ''modified or'' after ''not'' in the article description.

[FR Doc. 2012–31053 Filed 12–26–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice Lodging of Proposed Consent Decree Under the Clean Air Act

On December 20, 2012, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Kentucky in the lawsuit entitled *United States* v. *Kentucky Utilities Company*, Civil Action No. 3:12-cv-00076–CFVT.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks civil penalties and injunctive relief against Kentucky Utilities Company for violations of state and federal opacity, New Source Review, and Title V regulations at the company's electric generating station in Ghent, Kentucky. The proposed consent decree requires Kentucky Utilities to perform injunctive relief, pay a civil penalty of $300,000, and pay $500,000 for a mitigation project to fund the replacement of one or more coal-fired boilers used by public schools in Kentucky through geothermal technologies.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Kentucky Utilities Company*, D.J. Ref. No. 90–5–2–1–08850/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–31099 Filed 12–26–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; ISP Freetown Fine Chemicals

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on November 7, 2012, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture amphetamine.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive,

Springfield, Virginia 22152; and must be filed no later than January 28, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 20, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–31157 Filed 12–26–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Establishing Creditable Coverage Under Group Health Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Establishing Creditable Coverage Under Group Health Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR covers information collection requirements imposed under Regulations 29 CFR 2520.104b–1 and 2590.701–5 in connection with the alternative method of crediting coverage established by the regulations. The regulations permit a plan to adopt, as its method of crediting prior health coverage, provisions that impose different preexisting condition exclusion periods with respect to different categories of benefits, depending on prior coverage in that category. In such a case, the regulations require the former plan to provide additional information upon request to the new plan in order to establish an individual's length of prior creditable coverage within that category of benefits.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0103. The current approval is scheduled to expire on December 31, 2012 however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 25, 2012 (77 FR 37920).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0103. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Establishing Creditable Coverage Under Group Health Plans.

OMB Control Number: 1210–0103.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,283,712.

Total Estimated Number of Responses: 8,164,356.

Total Estimated Annual Burden Hours: 74,000.

Total Estimated Annual Other Costs Burden: $12,400,000.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 19, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–31055 Filed 12–26–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Notice of Availability of Producer Price Index (PPI) Data Users Survey

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Notice of availability of survey.

SUMMARY: The Bureau of Labor Statistics (BLS) will conduct a survey via the internet of Producer Price Index (PPI) data users. The survey is necessary to: Identify PPI data users, see how they use our data, and note areas of potential

improvement to better meet our customer's needs. BLS last conducted a survey of PPI data users in late 1976 through early 1977. Since that time, numerous new time series data have been introduced with the goal of fulfilling the needs of data users. This survey will help us determine if we are meeting those goals, highlight areas for improvement to existing data series, and identify areas for future expansion.

DATES: The Producer Price Index (PPI) user survey will be accessible until April 30, 2013.

ADDRESSES: Send comments to Joseph Kelley, Producer Price Index, Bureau of Labor Statistics, Room 3840, 2 Massachusetts Avenue NE., Washington, DC 20212 or by email to: *kelley.joseph@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Producer Price Index, Bureau of Labor Statistics, telephone number 202–691–7722 (this is not a toll-free number), or by email to: *kelley.joseph@bls.gov.*

SUPPLEMENTARY INFORMATION: The survey can be accessed at the following link: *https://www.research.net/s/PPIUserSurveyFederalRegister* or by going to the PPI homepage *http://www.bls.gov/ppi/* and using the link under 'Announcements'.

I. Background

The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements.

Producer Price Index data provide a description of the magnitude and composition of price change within the economy, and serve a wide range of governmental needs. This family of indexes are closely followed, monthly statistics that are viewed as sensitive indicators of the economic environment. Price data are vital in helping both the President and Congress set fiscal-spending targets. Producer prices are monitored by the Federal Reserve Board Open Market Committee to help decide monetary policy. Federal policy-makers at the Department of Treasury and the Council of Economic Advisors utilize these statistics to help form and evaluate monetary and fiscal measures and to help interpret the general business environment. In addition, it is common to find one or more PPIs, alone or in combination with other measures, used to escalate the delivered price of goods for government purchases.

In addition to governmental uses, PPI data are regularly put to use by the private sector. Private industry uses PPI data for contract escalation. For one particular method of tax-related Last-In-First-Out (LIFO) inventory accounting, the Internal Revenue Service suggests that firms use PPI data for making calculations. Private businesses make extensive use of industrial-price data for planning and operations. Price trends are used to assess the condition of markets. Firms commonly compare the prices they pay for material inputs as well as prices they receive for products that they make and sell with changes in similar PPIs.

Economic researchers and forecasters also put the PPI to regular use. PPIs are widely used to probe and measure the interaction of market forces. Some examples of research topics that require extensive price data include: The identification of varying price elasticities and the degree of cost pass-through in the economy, the identification of potential lead and lag structures among price changes, and the identification of prices which exert major impacts throughout market structures.

Signed at Washington, DC, this 20th day of December 2012.

Eric P. Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2012–31075 Filed 12–26–12; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314 (c) (4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 2011 and ending September 30, 2012.

Name and Title

William B. Cowen—Solicitor.

Kathleen A. Nixon—Deputy Chief Counsel to the Chairman.

Gary W. Shinners—Deputy Executive Secretary.

Robert Schiff—Executive Assistant to the Chairman.

Barry J. Kearney—Associate General Counsel, Division of Advice.

Anne G. Purcell—Associate General Counsel, Division of Operations Management.

Linda Dreeben—Deputy Associate General Counsel, Division of Enforcement Litigation.

John H. Ferguson—Associate General Counsel, Division of Enforcement Litigation.

Washington, DC By Direction of the Board.

Dated: December 20, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–31112 Filed 12–26–12; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of Federal Prevailing Rate Advisory Committee Meeting Dates in 2013

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 17, 2013	Thursday, July 18, 2013.
Thursday, February 21, 2013	Thursday, August 15, 2013.
Thursday, March 21, 2013	Thursday, September 19, 2013.
Thursday, April 18, 2013	Thursday October 17, 2013.
Thursday, May 16, 2013	Thursday, November 21, 2013.
Thursday, June 20, 2013	Thursday, December 19, 2013.

The meetings will start at 10 a.m. and will be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the U.S. Office of Personnel Management.

These scheduled meetings are open to the public with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the U.S. Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee.

These reports are available to the public. Reports for calendar years 2008 to 2011 are posted at *http://www.opm.gov/oca/Wage/FPRAC/index.asp.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5H27, 1900 E Street NW., Washington, DC 20415, (202) 606–9400.

U.S. Office of Personnel Management.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2012–31115 Filed 12–26–12; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30312; 812–14042]

Franklin Advisers, Inc., *et al.;* Notice of Application

December 19, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Franklin Advisers, Inc. (the ''Advisor''), Franklin ETF Trust (the ''Trust''), and Franklin Templeton Distributors, Inc. (the ''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on June 8, 2012, and amended on October 26, 2012, and December 18, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 January 14, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Mary Kay Frech, 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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust initially will offer one series, the Franklin Short Duration Government ETF (''Initial Fund''), which will seek a high level of current income as is consistent with prudent investing, while seeking preservation of shareholder capital.

2. Franklin Advisers, Inc., a California corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as investment adviser to the Initial Fund. The Advisor may in the future retain one or more sub-advisors (each a ''Sub-Advisor'') to manage the portfolios of the Funds (as defined below). Any Sub-Advisor will be registered under the Advisers Act. The Distributor, a registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act''), is an affiliated person of the Advisor, and will act as the distributor and principal underwriter of the Funds.

3. Applicants request that the order apply to the Initial Fund and any future

series of the Trust or of any other open-end management companies that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor (each, an ''Advisor''), and (b) comply with the terms and conditions of the application.[1] The Initial Fund and Future Funds together are the ''Funds''. Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and other assets (''Portfolio Instruments'').[2] Funds may invest in ''Depositary Receipts''.[3] Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[4]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[5] On any given Business Day[6] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[7] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[8] or (c) TBA Transactions,[9] short positions and other positions that cannot be transferred in kind[10] will be excluded from the Creation Basket.[11] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a

[1] Any Advisor to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] If a Fund invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[3] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Advisor or Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund or any Sub-Advisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[5] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[6] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[7] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[8] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[9] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[10] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[11] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[12]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Advisor to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[13] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[14] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[15] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[16]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b)

[12] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[13] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[14] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[15] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[16] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. 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.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[17]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. 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 total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be

[17] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [18] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[19]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[20] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which

[18] An ''Investing Fund Affiliate'' is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[19] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[20] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

the Funds are affiliated persons or second-tier affiliates.[21]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[22] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Sub-Advisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund

[21] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[22] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68498; File No. AN–FICC–2012–09]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Advance Notice and Notice of No Objection Relating to the Replacement of the Prepayment Component of the Value-at-Risk Charge

December 20, 2012.

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2012 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i),[2] notice is hereby given that on November 14, 2012, the Fixed Income Clearing Corporation (''FICC'') filed

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

with the Securities and Exchange Commission (''Commission'') the advance notice described in Items I and II below, which Items have been prepared primarily by FICC. This publication serves as notice of no objection to the advance notice and solicits comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

FICC is proposing to replace the prepayment model component (''Prepayment Model Change'') of the Mortgage-Backed Securities Division (''MBSD'') Value-at-Risk charge (''VaR Charge'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the proposed rule change and advance notice. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.[3]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

Description of Change

(i) Overview

A key component of each MBSD clearing member's Required Fund Deposit (e.g., margin) is the VaR Charge.[4] The VaR Charge is based on simulating to-be-announced (''TBA'') price returns which are dependent on projecting interest rates and prepayment levels. FICC maps TBA eligible pools into TBA CUSIPS for cash flow calculations. The cash flow of a TBA CUSIP is the sum of all discounted future monthly cash flows. The future cash flows include the projected monthly principal payment (both scheduled payment and prepayment) and interest rate expense on the estimated outstanding balance.

The MBSD currently uses a prepayment model developed by the Office of Thrift Supervision (''OTS''); this particular model is no longer being supported with parameter updates. Therefore, the MBSD is proposing to replace the current model it is using with a new one which it has developed.

(ii) Structure of the New Model

The proposed new prepayment model would rely on market-observed data that would allow calibration to occur on a regular basis to capture the prepayment risk of the mortgage pools underlying the TBAs. Model parameters will be updated daily using a rolling window of 252-day historical two-year swap rates, ten-year swap rates, and mortgage current coupons for a given product category.

The two-year benchmark would allow FICC to estimate the potential prepayment impact from refinance opportunities offered by the adjustable rate mortgage market. The ten-year swap rate is a standard benchmark for fixed rate mortgages. The current coupon rates are implied from the TBA market prices. Therefore, the FICC believes that the new model will be more responsive to changing market conditions than the current prepayment model.

A key component of any prepayment model is a mortgage rate model which estimates the current coupon (the secondary mortgage rate) for the TBA mortgage pools under various interest rate scenarios. The monthly prepayment speed will be estimated based on intensity function based on the refinancing incentive, loan age, and burnout (percentage of loans that fail to prepay despite apparent refinance incentives). This monthly prepayment speed is used to simulate TBA price returns for the VaR Charge component of the MBSD margin calculation. In the OTS model, the concept of ''seasonality'' is directly incorporated into the prepayment model. The factor is less of a driver of mortgage prepayment activity and FICC does not believe that it is necessary to incorporate this as a distinct assumption in the new prepayment model. There is a minor effect of seasonality through the pool factor.

During the analysis and design phase of the new prepayment model, FICC considered whether to utilize a ''security level'' model versus a ''loan level'' model. Loan level models focus on loan-to-value ratio, credit score, and spread at origination, which are aspects of hedging and risk assessment—particularly in evaluating exposure to involuntary prepayments (foreclosure, work-outs, etc.) that typically arise beyond TBA settlement cycle (less than 90 days). Loan level models are generally used by firms that trade and initiate mortgage-backed securities. FICC, whose processing activity at the MBSD spans a short horizon, chose a security level prepayment model which measures security level attributes that can measure short-term prepayment speed, i.e., the spread between the current coupon and the TBA coupon, seasoning, and average maturity. These are key attributes of voluntary prepayments that can impact TBA prices during the settlement cycle. FICC's external model validation team concluded that the proposed prepayment model is appropriate in measuring short-term prepayment speeds.

Anticipated Effect on and Management of Risks

FICC believes that the proposed Prepayment Model Change will enhance the risk management of the positions cleared at the MBSD. First, FICC believes that the proposed Prepayment Model Change will enhance risk management because the current prepayment model is no longer being supported with parameter updates, and thus relies on stale information and produces possibly inaccurate results. Second, as part of the migration to the new model, several steps were taken to reduce the potential risks to FICC and its members, including: validation of the proposed model by an external party, back-testing to validate model performance and analysis to determine the impact of the changes to the VaR requirements for the MBSD Members. Results of FICC's analysis indicate that the proposed Prepayment Model Change will be more responsive to changing market dynamics and FICC believes it will not negatively impact FICC and its members.

(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed change.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed changes contained in the advance notice may be implemented pursuant to Section 806(e)(1)(G) of Clearing Supervision Act[5] if the Commission does not object to the proposed changes within 60 days of the later of (i) the date that the Commission receives the notice of the proposed changes or (ii) the date the Commission receives any further information it requests for consideration of the notice. The clearing agency shall not implement the proposed changes contained in the advance notice if the

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] *See* MBSD Rule 4.

[5] 12 U.S.C. 5465(e)(1)(G).

Commission objects to the proposed changes.[6]

The Commission may extend the period for review by an additional 60 days if the proposed changes raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[7] Proposed changes may be implemented in fewer than 60 days from the receipt of the advance notice, or the date the Commission receives any further information it requested, if the Commission notifies the clearing agency in writing that it does not object to the proposed changes and authorizes the clearing agency to implement the proposed changes on an earlier date, subject to any conditions imposed by the Commission.[8]

The clearing agency shall post notice on its web site of proposed changes that are implemented.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 AN–FICC–2012–09 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 AN–FICC–2012–09. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/FICC–AN–2012–09.pdf.*

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 AN–FICC–2012–09 and should be submitted on or before January 17, 2013.

V. Commission Findings and Notice of No Objection

(A) Standard of Review

Although Title VIII does not specify a standard that the Commission must apply to determine whether to object to an advance notice, the Commission believes that the purpose of Title VIII, as stated under Section 802(b),[10] is relevant to the review of advance notices.

The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability, by (among other things) authorizing the Federal Reserve Board to promote uniform risk management standards for systemically important FMUs, and providing an enhanced role for the Federal Reserve Board in the supervising of risk management standards for systemically important FMUs.[11] Therefore, the Commission believes that when reviewing advance notices for FMUs, the consistency of an advance notice with Title VIII may be judged principally by reference to the consistency of the advance notice with applicable rules of the Federal Reserve Board governing payment, clearing, and settlement activity of the designated FMU.[12]

Section 805(a) requires the Federal Reserve Board and authorizes the Commission to prescribe standards for the payment, clearing, and settlement activities of FMUs designated as systemically important, in consultation with the supervisory agencies. Section 805(b) of the Clearing Supervision Act[13] requires that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- Promote safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The relevant rules of the Federal Reserve Board prescribing risk management standards for designated FMUs by their terms do not apply to designated FMUs that are clearing agencies registered with the Commission.[14] Therefore, the Commission believes that the objectives and principles by which the Federal Reserve Board is required and the Commission is authorized to promulgate such rules, as expressed in Section 805(b) of Title VIII,[15] are the appropriate standards at this time by which to evaluate advance notices.[16] Accordingly, the analysis set forth below is organized by reference to the stated objectives and principles in Section 805(b).

(B) Discussion of Advance Notice

The modeling of Prepayment Risk could significantly affect the risk management functions of the clearing agency that are related to systemic risk. The output of a prepayment model becomes an input into the calculation of the VaR Charge, which in turn determines a member's required clearing fund deposit. Weaknesses in the model could lead to the clearing fund being inappropriately low, and thus exposing the clearing agency to greater risk should a member default.

The OTS Model is no longer supported by parameter updates and has not been supported by such updates since December 31, 2011. The current model's reliance on stale parameters results in a potentially inaccurate determination of the speed of prepayments and thus a potentially inaccurate VaR Charge. This lack of calibration makes the OTS Model

[6] 12 U.S.C. 5465(e)(1)(F).

[7] 12 U.S.C. 5465(e)(1)(H).

[8] 12 U.S.C. 5465(e)(1)(I).

[9] 17 CFR 240.19b–4(n)(1)(i).

[10] 12 U.S.C. 5461(b).

[11] 12 U.S.C. 5461(b).

[12] *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

[13] 12 U.S.C. 5464(b).

[14] 12 CFR 234.1(b).

[15] 12 U.S.C. 5464(b).

[16] The risk management standards that have been adopted by the Commission in Rule 17Ad–22 are substantially similar to those of the Federal Reserve Board applicable to designated FMUs other than those designated clearing organizations registered with the CFTC or clearing agencies registered with the Commission. *See* Clearing Agency Standards, Exchange Act Release No. 34–68080 (Oct. 22, 2012). To the extent such Commission standards are in effect at the time advance notices are reviewed in the future, the standards would be relevant to the analysis. Moreover, the analysis of clearing agency rule filings under the Exchange Act would incorporate such standards directly.

unreliable and increases the risk that MBSD is not collecting sufficient margin given market conditions. Moving to the FICC Model that can be updated as the economic environment changes promotes robust risk management and reduces systemic risk because these changes can be more accurately reflected in margin calculations.

The Commission is conditioning its notice of no objection on FICC implementing policies and procedures reasonably designed to ensure that FICC timely analyzes and monitors the performance and appropriateness of the FICC Model. As discussed above, the OTS model directly incorporates the concept of seasonality, while the FICC model does not. In addition, the FICC model relies on market-observed data to capture the prepayment risk of the mortgage pools underlying the TBAs. The Commission understands that the OTS and many industry models use historical data on actual prepayments to determine the level of prepayment risk. The Commission believes it is important for both FICC and the Commission to observe how the FICC model compares to actual seasonality and prepayment history, two parameters that had previously informed the OTS model. As a result, the Commission would expect such policies and procedures to assess the performance of the FICC Model as compared to other published or calculated prepayment rate forecasts and to analyze the VaR coverage resulting from the use of the FICC Model as compared to the coverage that would be obtained after applying alternate VaR methodologies, such as the index-based haircut methodology already utilized by FICC. The Commission expects that this analysis would be disseminated to the Commission on a monthly basis.

The Commission believes that the replacement of the OTS Model with the FICC Model, subject to the conditions described above, meets the objectives and principles for the risk management standards prescribed under Section 805(a). The ability for FICC to update the FICC Model in response to changing economic conditions allows FICC to more appropriately calculate and collect margin, which better enables FICC to respond in the event that a member defaults. This in turn promotes robust risk management and safety and soundness, reduces systemic risk and supports the stability of the broader financial system.

Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[17] that, the Commission *does not object* to the Prepayment Model Change (File No. AN–FICC–2012–09) and that FICC be and hereby is *authorized* to implement the Prepayment Model Change (File No. AN–FICC–2012–09) subject to FICC implementing policies and procedures reasonably designed to ensure that FICC timely analyzes and monitors the performance and appropriateness of the FICC Model.

By the Commission.

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–31129 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68490; File No. SR–CME–2012–46]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule Applicable to its OTC Credit Default Swap Clearing Offering

December 20, 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 December 18, 2012, the Chicago Mercantile Exchange Inc. (''CME'' 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 primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

CME is proposing to amend the fee schedule that currently applies to its OTC Credit Default Swap clearing offering. The text of the proposed rule change is available at the Exchange's Web site at *http://www.cmegroup.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This filing proposes to make minor amendments to the current fee schedule that applies to CDX North American Index Credit Default Swaps cleared at CME. The only modification that is proposed is to extend the current twenty five percent (25%) discount of base clearing fees for all market participants that clear OTC North American Index CDS products at CME for another year. This discount was scheduled to expire as of December 31, 2012.

The proposed changes are related to fees and therefore will become effective immediately. However, the proposed fee changes will become operative as of January 2, 2013. CME has also certified the proposed rule changes that are the subject of this filing to the Commodity Futures Trading Commission (''CFTC''), in CFTC Submission 12–464.

The proposed CME rule amendments establish or change a member due, fee, or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Securities Exchange Act of 1934 and Rule 19b–4(f)(2) thereunder. CME believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder and, in particular, to 17A(b)(3)(D), in that it provides for the equitable allocation of reasonable dues, fees, and other charges among participants. The proposed changes apply to all market participants clearing trades at CME. CME believes the modifications should encourage firms to submit additional volume into the system which should help ensure readiness and also help build open interest ahead of a regulatory mandate. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

(B) Clearing Agency's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A)(ii) [5] of the Act and paragraph (f)(2) of Rule 19b–4 [6] thereunder and became effective on 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.

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–CME–2012–46 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–CME–2012–46. 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 filings will also be available for inspection and copying at the principal office of CME and on CME's Web site (*http://www.cmegroup.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–CME–2012–46 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31122 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68503; File No. SR–ICEEU–2012–15]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delivery Procedures To Reflect the Clearing Relationship for ICE Futures U.S. Inc.

December 20, 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 December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') 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 primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) [3] of the Act, and Rule 19b–4(f)(4)(ii) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the rule amendments is to permit ICE Clear Europe to act as the clearing organization for certain futures and options contracts listed on ICE Futures U.S. Inc. (''ICE Futures US''), a designated contract market with the Commodity Futures Trading Commission. The rule amendments consist of various conforming and technical changes to existing ICE Clear Europe rules and delivery procedures to reflect the clearing relationship for ICE Futures US. All capitalized terms not defined herein are defined in the ICE Clear Europe Delivery Procedures.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[5]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICE Clear Europe will act as the clearing organization for certain futures and options contracts listed on ICE Futures US, a designated contract market with the Commodity Futures Trading Commission. The rule amendments consist of various conforming and technical changes to existing ICE Clear Europe delivery procedures to reflect the clearing relationship for ICE Futures US.

Specifically, Section H of the ICE Clear Europe Delivery Procedures has been updated to apply to all ICE Futures US Contracts for which physical delivery is specified as being 'Applicable' in the relevant Contract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

Terms and which go to physical delivery on the expiry date.

Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, with Section 17A(b)(3)(F),[7] because they protect investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(4)(ii)[9] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. At any time within 60 days of the filing of the proposed procedure changes, 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.[10]

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–ICEEU–2012–15 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–ICEEU–2012–15. 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 filings will also be available for inspection and copying at the principal office ICE Clear Europe and on ICE Clear Europe's Web site (*https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012-15.pdf*).

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–ICEEU–2012–15 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31130 Filed 12–26–12; 8:45 am]

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[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68494; File No. SR–ICEEU–2012–17]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Position Allocation Methodology to Margin Calculations for Two Additional OTC Spread Swap Futures Contracts

December 20, 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 December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii)[3] of the Act, and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the change is to extend the Position Allocation Methodology to margin calculations for two additional OTC spread swap futures contracts. Position Allocation Methodology is an enhancement to the SPAN for the ICE Margining algorithm employed to calculate Original Margin. All capitalized terms not defined herein are defined in the ICE Clear Europe Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[5]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In addition to providing clearing services for credit default swaps, ICE Clear Europe also provides clearing services for non-securities contracts in energy and emissions markets (''Energy Futures Products''). Position Allocation Methodology is an enhancement to the SPAN® [6] for the ICE Margining algorithm employed to calculate Original Margin. This feature is applied for certain products where the position in such a product can be better represented as one or more positions in alternate products for the purposes of calculating Original Margin. This Position Allocation Methodology will result in new enhanced positions, but the SPAN margin calculation algorithm itself has not been changed. As of August 30, 2011, Position Allocation Methodology was applied also to:

- GOC: Gasoil Crack—Gasoil 1st Line vs. Brent 1st Line Swap Future (in Metric Tons); and
- GDC: Gasoil Crack—Gasoil 1st Line vs. Brent 1st Line Swap Future (in Barrels).

Application of Position Allocation Methodology means that positions in the above OTC spread swap futures contracts will be decomposed into the following new positions:

- 2 legs of the underlying spread, in this case into Gasoil 1st Line (GSP) and Brent 1st Line (BSP) swap futures; and
- 1 original spread swap future, which will capture the remaining risk.

Energy Clearing Members were advised that the current ''Scanning ranges and tiering'' margin file will contain an additional column specifying whether a logical commodity is subject to Position Allocation Methodology (Yes/No). Also, the scanning ranges published for the original swap futures contracts will represent the remaining risk parameter and not the price risk parameter. Price risk will be covered by the positions allocated in the spread legs. In addition, for contracts to which a Position Allocation is applied, further details of the position Allocation can be found in the new ''Position Allocation'' file.

Energy Clearing Members were also advised that ICE Clear Europe will change the SPAN margin parameters for the following contracts:

- Brent 1st Line Swap Future (BSP); and
- Gasoil 1st Line Swap Future (GSP).

All updated SPAN® margin parameters can be found at: *https://www.theice.com/clear_europe_span_parameters.jhtml.*

Section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICE Clear Europe believes that the proposed change with respect to Energy Futures Products is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, with Section 17A(b)(3)(F),[8] because improved margining of OTC spread swap futures contracts protects investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) [9] of the Act and Rule 19b–4(f)(4)(ii) [10] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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.

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–ICEEU–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–ICEEU–2012–17. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE

[5] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

[6] SPAN is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no responsibility in connection with the use of SPAN by any person or entity. SPAN is a risk evaluation and margin framework algorithm.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4)(ii).

Clear Europe's Web site (*https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012–17.pdf*).

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–ICEEU–2012–17 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31125 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68495; File No. SR–ICEEU–2012–16]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Position Allocation Methodology for SPAN Margin Calculation Extended to Three Additional Calendar Spread Options

December 20, 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 December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') 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 primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii)[3] of the Act, and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the change is to extend the Position Allocation Methodology to margin calculations for three additional calendar spread options. Position Allocation Methodology is an enhancement to the SPAN for the ICE Margining algorithm employed to calculate Original Margin. All capitalized terms not defined herein are defined in the ICE Clear Europe Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[5]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In addition to providing clearing services for credit default swaps, ICE Clear Europe also provides clearing services for non-securities contracts in energy and emissions markets (''Energy Futures Products''). ICE Clear Europe extended the Position Allocation Methodology to margin calculations for three additional calendar spread options. Position Allocation Methodology is an enhancement to the SPAN®[6] for the ICE Margining algorithm employed to calculate Original Margin and was designed to optimize and improve margin calculation in the London SPAN 4. This feature is applied for certain products where the position in such a product can be better represented as one or more positions in alternate products for the purposes of calculating Initial Margin. At the time of this implementation, this enhancement was already in place for the following spread options: TIA, BRM, TIB, HHM, and HMT.

The enhancement will be additionally applied to:

- GOA: Gas Oil 1-Month CSO;
- BRZ: Brent Oil 12-Month CSO; and
- TIZ: WTI Crude Oil 12-Month CSO.

All other SPAN® margin parameters remain unchanged. All updated SPAN® margin parameters can be found at: *https://www.theice.com/clear_europe_span_parameters.jhtml.*

Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICE Clear Europe believes that the proposed change with respect to Energy Futures Products is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICE Clear Europe, in particular, with Section 17A(b)(3)(F),[8] because improved margining of calendar spread options protects investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed change would have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[9] of the Act and Rule 19b–4(f)(4)(ii)[10] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] The Commission has modified the text of the summaries prepared by ICE Clear Europe.

[6] SPAN is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no responsibility in connection with the use of SPAN by any person or entity. SPAN is a risk evaluation and margin framework algorithm.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4)(ii).

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–ICEEU–2012–16 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–ICEEU–2012–16. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site (*https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012–16.pdf*).

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–ICEEU–2012–16 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31126 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68489; File No. 4–655]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving Minor Rule Violation Plan for BOX Options Exchange LLC

December 20, 2012.

On October 15, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed minor rule violation plan (''MRVP'') pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19d–1(c)(2) thereunder.[2] The proposed MRVP was published for public comment on November 13, 2012.[3] The Commission received no comments on the proposal. This order approves the Exchange's proposed MRVP.

The Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act [4] requiring that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[5] In accordance with Rule 19d–1(c)(2) under the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The Exchange proposed to include in its MRVP the procedures and violations currently included in Exchange Rule 12140 (''Imposition of Fines for Minor Rule Violations'').[6]

According to the Exchange's proposed MRVP, under Exchange Rule 12140, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule violation listed in Exchange Rule 12140(d).[7] The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed for each such violation, and the date by which such fine shall be paid, such determination becomes final or such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange Rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include, among other things: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[8]

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 68170 (November 6, 2012), 77 FR 67722 (''Notice'').

[4] 17 CFR 240.19d–1(c)(1).

[5] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[6] On April 27, 2012, the Exchange's application for registration as a national securities exchange, including the rules governing the Exchange, was approved. *See* Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10–206).

[7] *See* Notice, *supra* note 3. The Commission noted that the list of violations set forth in the Notice corrected certain rule reference errors that are presently in Exchange Rule 12140. The Exchange has informed Commission staff that it will submit a rule filing to correct such errors. *Id.*

[8] The Exchange attached a sample form of the quarterly report with its submission to the Commission.

6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[10] which require that the exchange enforce compliance with, and provide appropriate discipline for violations of, Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Exchange Rule 12140, the Commission believes that Exchange Rule 12140 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[11]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[12] because the MRVP strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Exchange Rule 12140. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Exchange Rule 12140 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act,[13] that the proposed MRVP for BOX Options Exchange LLC, File No. 4–655, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31121 Filed 12–26–12; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[11] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[12] 17 CFR 240.19d–1(c)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68487; File No. SR–CBOE–2012–124]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule To Amend Various CBOE Rules Governing Letters of Guarantee and Authorization

December 20, 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 December 14, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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

CBOE proposes to amend various CBOE rules governing letters of guarantee and authorization. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at 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 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

Trading Permit Holders (''TPHs'') that have trading functions on CBOE, are required to submit a letter of guarantee or authorization [3] for that TPH's trading activities on CBOE from a Clearing TPH.[4] The purpose of this proposal is to amend various CBOE rules governing letters of guarantee and authorization to:

- Give CBOE the ability to prevent access to its marketplace if a TPH does not have an effective letter of guarantee or authorization on file with the Exchange;
- Provide that any written revocation of a letter of guarantee or authorization will be given effect as quickly as CBOE can process it;
- Give CBOE the ability to take any action necessary to give effect to actions by the Clearing Corporation,[5] such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;
- Automatically terminate the trading permit(s) and TPH status of a TPH if the TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days;
- Delete obsolete and outdated rule text; and
- Make technical, non-substantive rule text changes.

The changes proposed in this filing are intended to clarify and codify existing and well-established principles regarding activities permitted by Clearing TPHs. While elementary, the Exchanges believes that it is important to specifically provide in its rules that a TPH must have a valid letter of guarantee or authorization in order to engage in trading activities and, if one is not in place, the Exchange is permitted to prevent connectivity and access to the Exchange by that TPH. Similarly, the definition of a Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A letter of guarantee is typically provided to CBOE by a Clearing TPH guaranteeing any trades made by one of its TPH customers, *e.g.,* a Market-Maker. A letter of authorization is typically provided to CBOE by a Clearing TPH accepting financial responsibility for all transactions on CBOE made by a guaranteed Floor Broker.

[4] CBOE Rule 1.1(f) defines ''Clearing Trading Permit Holder'' as a Trading Permit Holder that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the Rules of the Clearing Corporation.

[5] The Options Clearing Corporation (''OCC'') is currently the only Clearing Corporation of CBOE.

TPH requires that a TPH be admitted to membership in the OCC.[6] If the OCC restricts the activities of a Clearing TPH or terminates a Clearing TPH's membership in the OCC, that TPH no longer meets the definition of a ''Clearing TPH.'' As a result, the Exchange believes it is appropriate to codify its ability to take action, as necessary, to give effect to any restriction or suspension issued by the OCC.[7] Finally, the Exchange is proposing to provide that if a TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days, the TPH's TPH status and trading permit(s) will automatically terminate (in addition to previous action by the Exchange not to allow the TPH to have access and connectivity to the Exchange without a required guarantee which would occur following the revocation of a guarantee). If a TPH no longer has a valid letter of guarantee and authorization, that TPH presents risk to the marketplace and the Exchange believes it is appropriate to terminate trading, access and connectivity and then TPH status in this situation.

Changes to Rule 3.28 (Letters of Guarantee)

The Exchange is proposing to amend CBOE Rule 3.28 so that it will govern letters of guarantee and authorization (currently Rule 3.28 is limited to letters of guarantee).[8] The Exchange is proposing to add new paragraphs (b) through (g) to Rule 3.28 to expressly provide CBOE with remedial powers in the event the OCC restricts or suspends a Clearing TPH. The Exchange is also proposing to add new paragraph (h) to Rule 3.28 to govern the termination of TPH status when a TPH is without a required letter of guarantee or authorization for a ninety consecutive day period.

First, the Exchange is proposing to provide that a TPH may not engage in any trading activities on the Exchange if an effective letter of guarantee or authorization required to engage in those activities is not on file with the Exchange. If a Trading Permit Holder does not have an effective letter of guarantee or authorization on file with the Exchange, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Trading Permit Holder.

Second, the Exchange is proposing to provide that letters of guarantee and authorization filed with the Exchange will remain in effect until a written notice of revocation has been filed with the TPH Department and the revocation becomes effective or the letter of guarantee or authorization otherwise becomes invalid pursuant to Exchange rules. A written notice of revocation will become effective as soon as the Exchange is able to process the revocation. A revocation will in no way relieve a Clearing TPH of responsibility for transactions guaranteed prior to the effectiveness of the revocation.

Third, the Exchange is proposing to provide that if the OCC restricts the activities of a Clearing TPH or suspends a Clearing TPH as a Clearing Member of the OCC, the Exchange will be permitted to take action as necessary to give effect to the restriction or suspension. For example, if the OCC restricts transactions cleared by a Clearing TPH to ''closing only'' transactions, the Exchange will be similarly able to restrict transactions on the Exchange for clearance by that Clearing TPH as a Clearing Member of the OCC to ''closing only'' transactions. Similarly, if the OCC suspends a Clearing TPH, the Exchange will be similarly able to prevent access and connectivity to the Exchange by the suspended Clearing TPH.

Fourth, the Exchange is proposing to provide that if a Clearing TPH's status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated, all letters of guarantee and authorization on file with the Exchange from that Clearing TPH will no longer be valid effective as soon as the Exchange is able to process the invalidation of these letters of guarantee and authorization.

Fifth, the Exchange is proposing to provide that if a Clearing TPH has been suspended as a Clearing Member of the OCC or as a CBOE TPH, all existing letters of guarantee and authorization from that Clearing TPH will be invalid during the period of the suspension effective as soon as the Exchange is able to process the invalidation of those letters of guarantee and authorization.

Sixth, the Exchange is proposing to provide that the invalidation of a letter of guarantee or authorization will in no way relieve the Clearing TPH that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation.

Seventh, the Exchange is proposing to provide that if a Trading Permit Holder does not have a required letter of guarantee or authorization for period of ninety consecutive days, the Trading Permit Holder's trading permit(s) and status as a Trading Permit Holder shall automatically be terminated.

A revocation of a letter of guarantee or authorization will not occur immediately upon receipt of the revocation by the TPH Department because it takes time for the Exchange to process and effectuate the revocation. For example, there are changes that must be input into the Exchange's systems in order to systematize and effectuate a revocation. Also Exchange staff may be occupied with other matters when a revocation is received and may not immediately be able to process the revocation. Accordingly, the revocation and invalidation of letters of guarantee and authorization under proposed Rules 3.28(c) and 3.28(f) shall become effective as soon as the Exchange is able to process the revocation or invalidation. The Exchange will endeavor to process revocations and invalidations in a timely manner under the circumstances but makes no guarantees in this respect.

If a TPH has a letter of guarantee or authorization that is revoked or invalidated, that TPH's orders and quotes will be rejected after the revocation or invalidation after the revocation or invalidation becomes effective unless and until the TPH has another effective letter of guarantee or authorization in place and on file with the Exchange. This means that a TPH without an effective letter of guarantee or authorization will not be able to continue to trade on the Exchange.

Changes to Rule 6.72 (Letters of Authorization)

The Exchange is proposing to amend CBOE Rule 6.72 to provide that a letter of authorization previously filed with the Exchange will remain effective until a written notice of revocation has been filed with the TPH Department and the revocation becomes effective or until such time that the letter of authorization otherwise becomes invalid under CBOE's rules. In the event a written notice of revocation is provided, the Exchange is proposing to provide that the revocation shall become effective as soon as the Exchange is able to process it. The current rule sets forth a time

[6] *See* CBOE Rule 1.1(f).

[7] Earlier this year, the SEC approved a proposal by a stock exchange that resulted in a modest expansion of its emergency suspension authority. In that filing, the Chicago Stock Exchange (''CHX'') proposed to permit officers designated by its Chief Regulatory Officer to suspend or otherwise limit membership of a market participant if a qualified clearing agency refuses to act to clear and settle the trades of that market participant. The Exchange believes its current proposal is similar in nature to the CHX filing since CBOE is seeking to codify its ability to give effect to actions (restrictions or suspensions) taken by the OCC. *See* Securities Exchange Act Release No. 66366 (February 9, 2012), 77 FR 8927 (February 15, 2012) (order approving SR–CHX–2011–34).

[8] Rule 6.72 will also continue to govern Letters of Authorization for Floor Brokers and Rule 8.5 will also continue to govern Letters of Guarantee for Market-Makers.

period for the effectiveness of a revocation to take place. The Exchange does not believe that a rigid timeframe is necessary. Due to the Exchange's ability to process revocations more quickly, a rigid timeframe for processing is no longer needed. The Exchange is also proposing to eliminate the provision that a Clearing TPH may request that the Exchange post notice of the revocation because the Exchange believes that such notice is no longer necessary. A posting is not currently required unless requested by the Clearing TPH that submitted the revocation, and the Exchange believes that all such revocations should be handled in the same manner in this regard. Since it is unusual for a Clearing TPH to request that notice of a revocation be posted, the Exchange does not see a need to do so based on this past experience.

The Exchange also proposes to include an internal cross reference to Rule 3.28 that would provide that letters of authorization issued for Floor Brokers under Rule 6.72 will be subject to Rule 3.28 whereas those letters of authorization issued to Floor Brokers were previously only governed by Rule 6.72. There would be some overlap between current Rule 6.72 and the newly proposed provisions to Rule 3.28; however, the following new provisions to Rule 3.28 would apply to letters of authorization issued pursuant to Rule 6.72 by reference:

- Give CBOE the ability to prevent access to its marketplace if a Floor Broker TPH does not have an effective letter of authorization on file with the Exchange (Proposed Rule 3.28(b));
- Give CBOE the ability to take any action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH (Proposed Rule 3.28(d));
- Give CBOE the ability to invalidate a Floor Broker's letter of authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of authorization (Proposed Rule 3.28(e));
- Give CBOE the ability to invalidate a Floor Broker's letter of authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of authorization (Proposed Rule 3.28(f));
- Provide that the invalidation of a letter of authorization shall in no way relieve the Clearing Trading Holder that issued the letter of authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation (Proposed Rule 3.28(g)); and
- Automatically terminate the trading permit(s) and TPH status of a Floor Broker TPH if the Floor Broker TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days (Proposed Rule 3.28(h)).

Finally, the Exchange proposes to make a few, non-substantive and technical changes to Rule 6.72 (*i.e.,* minor word phrasing changes).

Changes to Rule 8.5 (Letters of Guarantee)

The Exchange is proposing to amend CBOE Rule 8.5 to provide that a letter of guarantee previously filed with the Exchange will remain effective until a written notice or revocation has been filed with the TPH Department and the revocation becomes effective or until such time that the letter of guarantee otherwise becomes invalid under CBOE's rules. In the event a written notice of revocation is provided, the Exchange is proposing to provide that the revocation shall become effective as soon as the Exchange is able to process it. The current rule sets forth a time period for the effectiveness of a revocation to take place. The Exchange does not believe that a rigid timeframe is necessary. Due to the Exchange's ability to process revocations more quickly, a rigid timeframe for processing is no longer needed. The Exchange is also proposing to eliminate the provision that a Clearing TPH may request that the Exchange post notice of the revocation for the same reasons set forth in the paragraph above relating to revocations under Rule 6.72.

The Exchange also proposes to include an internal cross reference to Rule 3.28 that would provide that letters of guarantee issued for Market-Makers under Rule 8.5 will be subject to Rule 3.28 whereas those letters of guarantee issued to Market-Makers were previously only governed by Rule 8.5. There would be some overlap between current Rule 8.5 and the newly proposed provisions to Rule 3.28; however, the following new provisions to Rule 3.28 would apply to letters of guarantee issued pursuant to Rule 8.5 by reference:

- Give CBOE the ability to prevent access to its marketplace if a Market-Maker TPH does not have an effective letter of guarantee on file with the Exchange (Proposed Rule 3.28(b));
- Give CBOE the ability to take any action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH (Proposed Rule 3.28(d));
- Give CBOE the ability to invalidate a Market-Maker's letter of guarantee if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee (Proposed Rule 3.28(e));
- Give CBOE the ability to invalidate a Market-Maker's letter of guarantee, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee (Proposed Rule 3.28(f));
- Provide that the invalidation of a letter of guarantee shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee of responsibility from transactions guaranteed prior to the effectiveness of the invalidation (Proposed Rule 3.28(g)); and
- Automatically terminate the trading permit(s) and TPH status of a Market-Maker Broker TPH if the Market-Maker TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days (Proposed Rule 3.28(h)).

The Exchange also proposes to make a few, non-substantive and technical changes to Rule 8.5 (*i.e.,* minor word phrasing changes).

Finally, the Exchange is proposing to delete Interpretations and Policies .01, .02 and .04 from Rule 8.5 since .01 is obsolete as the Exchange no longer offers trading in the product referenced in that provision and .02 and .04 are obsolete since the OCC is no longer involved in approving CBOE letters of guarantee.

Changes to Rules 24A.15 and 24B.13 (Letters of Guarantee or Authorization)

CBOE Rules 24A.15 and 24B.13 relate to FLEX options. The Exchange is proposing to amend those rules by deleting a provision in each rule relating to OCC approval of letters of guarantee that are being amended to include FLEX option transactions, since that provision is obsolete as the OCC is no longer involved in approving CBOE letters of guarantee.

The Exchange also proposes to include an internal cross reference to Rule 3.28 that would provide letters of guarantee or authorization issued for FLEX Market-Makers and Floor Brokers under Rules 24A.15 and 24B.13 will be subject to Rule 3.28 whereas those letters of guarantee or authorization issued to FLEX Market-Makers or Floor Brokers were previously only governed by Rules 24A.15 and 24B.15. There would be some overlap between current Rules 24A.15 and 24B.15 and the newly proposed provisions to Rule 3.28; however, the following new provisions to Rule 3.28 would apply to letters of guarantee or authorization issued pursuant to Rules 24A.15 and 24B.15 by reference:

- Give CBOE the ability to prevent access to its marketplace if a FLEX Market-Maker or Floor Broker TPH does not have an effective letter of guarantee or authorization on file with the Exchange (Proposed Rule 3.28(b));
- Give CBOE the ability to take any action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH (Proposed Rule 3.28(d));
- Give CBOE the ability to invalidate a FLEX Market-Maker or Floor Broker TPH's letter of guarantee or authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization (Proposed Rule 3.28(e));
- Give CBOE the ability to invalidate a FLEX Market-Maker or Floor Broker TPH's letter of guarantee or authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization (Proposed Rule 3.28(f));
- Provide that the invalidation of a letter of guarantee or authorization shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation (Proposed Rule 3.28(g)); and
- Automatically terminate the trading permit(s) and TPH status of a FLEX Market-Maker or Floor Broker TPH if the FLEX Market-Maker or Floor Broker TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days (Proposed Rule 3.28(h)).

Finally, the Exchange also proposes to make a few, non-substantive and technical changes to Rules 24A.15 and 24B.13 (*i.e.,* the addition of the word ''effective'' in subparagraphs (a) and (b) to each rule).

Changes to Rules 26.11 (Market-Makers) and 26.13 (Floor Broker Financial Requirements)

CBOE Rules 26.11 and 26.13 relate to market basket contracts, which the Exchanges does not currently list for trading, but the Exchange is taking the opportunity to amend the identified rules since the changes proposed in this filing are on subject. The Exchange is proposing to amend those rules by deleting a provision in each rule relating to OCC approval of letters of guarantee that are amended to include market basket transactions, since that provision is obsolete as the OCC is no longer involved in approving CBOE letters of guarantee.

The Exchange also proposes to include an internal cross reference to Rule 3.28 that would provide that letters of guarantee issued for Market-Makers in market basket contracts and letters of authorization issued for Floor Brokers in market basket contracts under Rules 26.11 and 26.13, respectively, will be subject to Rule 3.28 whereas those letters of guarantee or authorization issued to Market-Makers and Floor Brokers in market basket contracts were previously only governed by Rules 26.11 and 26.13. There would some overlap between current Rules 26.11 and 26.13 and the newly proposed provisions to Rule 3.28; however, the following new provisions to Rule 3.28 would apply to letters of guarantee or authorization issued pursuant to Rules 26.11 and 26.13 by reference:

- Give CBOE the ability to prevent access to its marketplace if a Market-Maker or Floor Broker TPH in market basket contracts does not have an effective letter of guarantee or authorization on file with the Exchange (Proposed Rule 3.28(b));
- Give CBOE the ability to take any action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH (Proposed Rule 3.28(d));
- Give CBOE the ability to invalidate a market basket Market-Maker or Floor Broker TPH's letter of guarantee or authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization (Proposed Rule 3.28(e));
- Give CBOE the ability to invalidate a market basket Market-Maker or Floor Broker TPH's letter of guarantee or authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization (Proposed Rule 3.28(f));
- Provide that the invalidation of a letter of guarantee or authorization shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation (Proposed Rule 3.28(g)); and
- Automatically terminate the trading permit(s) and TPH status of a Market-Maker or Floor Broker TPH in market basket contracts if the Market-Maker or Floor Broker TPH in market basket contracts does not have a required letter of guarantee or authorization in place for ninety consecutive days (Proposed Rule 3.28(h)).

The Exchange also proposes to make a few, non-substantive and technical changes to Rules 26.11 and 26.13 (*i.e.,* the addition of the words ''Exchange'' and ''effective'' to Rule 26.11 and the addition of the word ''valid'' to Rule 26.13).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9]

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Expressly permitting the Exchange to take action as needed to give effect to a restriction or suspension issued by the OCC will protect the integrity of the Exchange's marketplace by limiting

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

trading to only those TPHs with effective and unrestricted letters of guarantee and authorization. A key purpose for having Clearing TPHs is to reduce the risk of market participants failing to honor executed trades. By requiring that TPHs have an effective and unrestricted letters of guarantee, the Exchange is advancing this purpose. Additionally, the Exchange believes that the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it will allow CBOE to take actions to give effect to restrictions or suspensions issued by the OCC. The ability to take action is designed to prevent the execution of trades on CBOE which may not be able to be ultimately cleared and settled if access to CBOE's marketplace is not restricted in tandem with a restriction or suspension issued by the OCC. Also, preventing access and connectivity to the Exchange by a TPH if that TPH's Clearing TPH revokes the TPH's letter of guarantee or authorization is beneficial to the marketplace and serves to protect investors since it prevents trading by a TPH without a financial guarantee for that trading. If a TPH no longer has a valid letter of guarantee or authorization, that TPH presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange by that TPH in this situation. The Exchange also believes that having the ability to terminate the TPH status and trading permit(s) of a TPH that does not have a required letter of guarantee or authorization for ninety consecutive days is desirable since it allows the Exchange to appropriately manage and control access to its marketplace by limiting access only to those with a financial guarantee which thereby serves to protect investors by ensuring that counterparties to trades have such a guarantee.

The Exchange believes the proposed rule change is also consistent with the Section 6(b)(7) [11] requirements that the rules of an exchange provide a fair procedure for the denial of membership to any person seeking membership therein and the prohibition or limitation by an exchange of any person with respect to access to services offered by the exchange.

Specifically, with respect to the proposed automatic termination provision when a TPH does not have a required letter of guarantee or authorization for ninety consecutive days, the Exchange believes that that provision establishes a fair procedure because it strikes the appropriate balance between giving a deficient TPH an adequate amount of time to cure the deficiency of not having a required letter of guarantee or authorization and allowing the Exchange to appropriately limit access to its marketplace only to those TPHs with a financial guarantee. Furthermore, the automatic termination provision does not prohibit or limit a previously terminated TPH from seeking to gain access again to the Exchange by applying to become a TPH subsequent to the termination if the TPH is able to again acquire the required letter of guarantee and authorization.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 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 up to 90 days (i) as the Commission may designate 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 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
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–124 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–CBOE–2012–124. 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–CBOE–2012–124 and should be submitted on or before January 17, 2013

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31119 Filed 12–26–12; 8:45 am]

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[11] 15 U.S.C. 78f(b)(7).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68497; File No. SR–ICEEU–2012–12]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Acceptance of Letters of Credit or Pass-Through Letters of Credit Deposits From Non-Financial Institution Energy Clearing Members

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III, below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to accept Letters of Credit as permitted cover for certain clearing members for cleared energy futures. As part of the update to the Permitted Cover, ICE Clear Europe will consider new requests to use Letters of Credit or Pass through Letters of Credit to meet Initial/Original Margin requirements. All capitalized terms not defined herein are defined in the ICE Clear Europe Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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 and comments may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C, below, of the most significant aspects of these statements.[5]

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In addition to providing clearing services for credit default swaps, ICE Clear Europe also provides clearing services for non-securities contracts in energy and emissions markets (''Energy Futures Products''). ICE Clear Europe is updating the List of Permitted Cover and Haircuts[6] to allow non-financial institution Energy Clearing Members to deposit Letters of Credit or Pass-Through Letters of Credit to cover Initial/Original Margin requirements for Energy Futures Products.[7]

The Clearing House will accept three forms of the Letter of Credit:

- Letters of Credit: May be deposited by non-financial Energy Clearing Members;
- Pass-Through Letters of Credit: May be deposited by non-financial institutions that are clients of Energy Clearing Members without FCM Clearing Member status; and
- Pass-Through Letters of Credit: May be deposited by non-financial institutions that are clients of Clearing Members with FCM Clearing Member status, from November 28, 2012.

Both forms of Pass-Through Letters of Credit are transferrable from ICE Clear Europe to the Clearing Member making the Clearing Member the beneficiary of the proceeds at execution. The Clearing Member will be responsible for assessing the wording of the Letter of Credit and only consent to its use in case the Letter on Credit is acceptable by the Clearing Member as permitted cover and fully compliant with its regulatory requirements.

ICE Clear Europe believes that the proposed change is consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to it. Section 17A(b)(3)(F)[8] of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest. ICE Clear Europe believes that allowing non-financial institutions to deposit Letters of Credit or Pass-Through Letters of Credit as permitted cover for Initial/Original Margin requirements for energy futures products would help protect investors and the public interest.

B. Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ICE Clear Europe has not solicited written comments regarding the proposed change. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[9] of the Act and Rule 19b–4(f)(4)(ii)[10] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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.[11]

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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comments@sec.gov.* Please include File No. SR–ICEEU–2012–12 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] The Commission has modified the text of the summaries provided by ICE Clear Europe.

[6] The updated list of Permitted Cover, along with the corresponding haircut rates, can be found at the following location: *https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf.*

[7] Letters of Credit and Pass-Through Letters of Credit are subject to concentration limits as described in the list of Permitted Cover. *See id.*

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4)(ii).

[11] 15 U.S.C. 78s(b)(3)(C).

Commission, 100 F Street NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ICEEU–2012–12. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of ICE Clear Europe, and on ICE Clear Europe's Web site at: *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012–12.pdf.*

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–ICEEU–2012–12 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31128 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68488; File No. SR–NYSEArca–2012–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Guggenheim Enhanced Total Return ETF Under NYSE Arca Equities Rule 8.600

December 20, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 13, 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''): Guggenheim Enhanced Total Return ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Guggenheim Enhanced Total Return ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] The Shares will be offered by the Claymore Exchange-Traded Fund Trust 2 (the ''Trust''),[5] a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

The investment adviser for the Fund is Guggenheim Funds Investment Advisors, LLC (''Adviser''). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, LLC is the distributor for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing

[4] 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.

[5] The Trust is registered under the 1940 Act. On June 9, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–135105 and 811–21910) (the ''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. 29271 (May 18, 2010) (File No. 812–13534) (''Exemptive Order'').

[6] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing of Peritus High Yield ETF); 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF).

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.[7] 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. The Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investment Strategies

According to the Registration Statement, the Fund's investment objective is to seek maximum total return, comprised of income and capital appreciation. The Fund will normally[8] invest in a portfolio of fixed income instruments of varying maturities and equity securities.

Fixed Income Instruments Investments

The fixed income instruments in which the Fund will invest include bonds, debt securities and other similar instruments, such as Treasury securities, collateralized mortgage obligations (''CMOs''), collateralized loan obligations (''CLOs'') and mortgage- and asset-backed securities, issued by various U.S. and non-U.S. public- or private-sector entities. The Fund will normally invest at least 65% of its assets in fixed income instruments.

In addition, the Fund may invest in U.S. and non-U.S. dollar-denominated debt securities of U.S. and foreign corporations, governments, agencies and supra-national agencies.[9]

While the Fund generally will invest more than 50% of its assets in investment grade fixed income instruments, the Fund also expects to invest to a maximum of 35% of its total assets in high yield debt securities (''junk bonds''), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable quality. The Fund may invest up to 30% of its total assets in debt securities denominated in foreign currencies, and may invest without limitation in U.S. dollar-denominated debt securities of foreign issuers. The Fund may invest up to 20% of its total assets in debt securities and instruments that are economically tied to emerging market countries.[10]

The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities. This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (''GNMA''), the Federal Housing Administration (''FHA''), the Federal National Mortgage Association (''FNMA'') and the Federal Home Loan Mortgage Corporation (''FHLMC''). The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

The Fund may invest in short-term instruments such as commercial paper,[11] repurchase agreement,[12] and/or reverse repurchase agreement.[13] The Fund may invest in money market instruments (including other funds which invest exclusively in money market instruments). These investments in money market instruments may be as part of a temporary defensive strategy to

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''normally'' includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; 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.

[9] Generally a corporate bond must have $100 million or more par amount outstanding to be considered as an eligible investment.

[10] According to the Registration Statement, emerging market countries are countries that major international financial institutions, such as the World Bank, generally consider to be less economically mature than developed nations. Emerging market countries can include every nation in the world except the United States, Canada, Japan, Australia, New Zealand and most countries located in Western Europe. Generally a corporate bond of an issuer in an emerging market must have $200 million or more par amount outstanding to be considered as an eligible investment.

[11] The commercial paper in which the Fund may invest includes variable amount master demand notes and asset-backed commercial paper. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies and other issuers.

[12] Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund may accept a wide variety of underlying securities as collateral for the repurchase agreements entered into by the Fund. Such collateral may include U.S. government securities, corporate obligations, equity securities, municipal debt securities, mortgage-backed securities and convertible securities. Any such securities serving as collateral are marked-to-market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

[13] Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases the Fund is able to keep some of the interest income associated with those securities.

protect against temporary market declines.

The Fund may invest in debt securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate instrument. The Fund will not, however, invest in inverse floaters. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations. Many securities with variable or floating interest rates purchased by the Fund will be subject to payment of principal and accrued interest (usually within seven days) on the Fund's demand. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor and/or a liquidity provider. The Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

With respect to fixed income instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Equity Securities Investments

The Fund may invest up to 35% of its total assets in U.S. exchange listed equity securities and foreign equity securities.[14] The Fund may invest up to 30% of its total assets in U.S. exchange listed preferred stock, convertible securities [15] and other equity-related securities. The Fund may gain exposure to commodities through investment of up to 30% of its total assets, which may include investments in exchange-traded products (''Underlying ETPs'') [16] and exchange-traded notes (''ETNs'').[17] The Fund may invest in the securities of exchange listed real estate investment trusts (''REITs'') to the extent allowed by law, which pool investors' funds for investments primarily in commercial real estate properties. Investment in REITs may be the most practical available means for the Fund to invest in the real estate industry.

Other Investments

As a non-principal investment strategy, the Fund may invest in insurance-linked securities and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular security or security index), other than ETNs. The Fund may invest in certificates of deposit (''CDs''), time deposits and bankers' acceptances from U.S. banks. A bankers' acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank. A CD is a negotiable interest-bearing instrument with a specific maturity. CDs are issued by banks and savings and loan institutions in exchange for the deposit of funds and normally can be traded in the secondary market prior to maturity. A time deposit is a non-negotiable receipt issued by a bank in exchange for the deposit of funds. Like a CD, it earns a specified rate of interest over a definite period of time; however, it cannot be traded in the secondary market.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities. Because zero-coupon and pay-in-kind securities do not pay current cash income, the price of these securities can be volatile when interest rates fluctuate.

The Fund may use delayed delivery transactions as an investment technique. Delayed delivery transactions, also referred to as forward commitments, involve commitments by the Fund to dealers or issuers to acquire or sell securities at a specified future date beyond the customary settlement for such securities. These commitments may fix the payment price and interest rate to be received or paid on the investment. The Fund may purchase securities on a delayed delivery basis to the extent that it can anticipate having available cash on the settlement date. Delayed delivery agreements will not be used as a speculative or leverage technique.

The Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (''forward contracts'').

The Fund may invest in the securities of other investment companies. Under Section 12(d) of the 1940 Act, or as otherwise permitted by the Commission, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.[18]

The Fund will be considered non-diversified and can invest a greater portion of assets in securities of individual issuers than a diversified fund.[19]

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.[20]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities [21] (calculated at the

[14] The foreign equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See* note 30, *infra*.

[15] Convertible securities include bonds, debentures, notes, preferred stocks and other securities that entitle the holder to acquire common stock or other equity securities of the same or a different issuer.

[16] Underlying ETPs include 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); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[17] ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

[18] 15 U.S.C. 80a–12(d).

[19] A ''non-diversified company'', as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

[20] *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).

[21] The Fund may invest in master demand notes, which are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand feature, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to the Fund's percentage limitations for holdings in illiquid securities. In addition, the Fund may purchase participations in corporate loans. Participation

time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[22]

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[23]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [24] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[25]

Creations and Redemptions of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof (''Creation Unit'') through an Authorized Participant, as described in the Registration Statement. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (the ''Deposit Securities'') (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser (''Fund Securities'') and generally make a cash payment referred to as the ''Cash Component.'' The list of the names and the amounts of the Deposit Securities will be made available by the Fund's custodian through the facilities of the National Securities Clearing Corporation (''NSCC'') immediately prior to the opening of the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m. Eastern time (''E.T.'')). The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the NYSE Arca is open for business. The Fund's custodian will make available immediately prior to the opening of the NYSE Arca Core Trading Session, through the facilities of NSCC, the list of the names and the amounts of the Fund's portfolio constituents that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units.

Net Asset Value

The NAV per Share of the Fund will be determined once daily as of the close of the New York Stock Exchange (''NYSE''), usually 4:00 p.m. E.T., each day the NYSE is open for trading, provided that (a) any assets or liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers); and (b) U.S. fixed income instruments may be valued as of the announced closing time for trading in fixed income instruments on any day that the Securities Industry and Financial Markets Association announces an early closing time. NAV per Share is determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding.

Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. The Fund's debt securities, including some or all of the mortgage-backed securities in which the Fund invests, may also be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all of the Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by the Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. Short-term securities for which market quotations are not readily available will be valued at amortized cost, which approximates market value. Equity securities will be valued at the last reported sale price on the principal exchange on which such securities are traded, as of the close of regular trading

interests generally will be acquired from a commercial bank or other financial institution (a ''Lender'') or from other holders of a participation interest (a ''Participant''). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (the ''Borrower''). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund's rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund's percentage limitations for holdings in illiquid securities.

[22] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[23] 26 U.S.C. 851.

[24] 17 CFR 240.10A–3.

[25] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

on the NYSE on the day the securities are being valued or, if there are no sales, at the mean of the most recent bid and ask prices. Equity securities that are traded primarily on the NASDAQ Stock Market will be valued at the NASDAQ Official Closing Price. Securities for which market quotations (or other market valuations such as those obtained from a pricing service) are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believes accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, a trading halt in a security, an unscheduled early market close or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

Availability of Information

The Fund's Web site (*www.guggenheiminvestments.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-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[26] 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 as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[27]

On a daily basis, the Adviser will disclose on the Fund's Web site 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, price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the securities exchanges on which such securities are listed and traded.

In addition, a basket composition file, which will include 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 NSCC. 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 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 for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[28] 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 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.

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.[29] 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 a.m. to 8 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

[26] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[27] Under accounting procedures to be 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.

[28] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[29] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

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 ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[30] All of the equity investments to be held by the Fund, including the non-U.S.-listed equity securities held by the Fund, will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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 Units (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)[31] 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. While the Fund generally will invest more than 50% of its assets in investment grade fixed income instruments, the Fund also expects to invest to a maximum of 35% of its total assets in high yield debt securities. The Fund may invest up to 30% of its total assets in debt securities denominated in foreign currencies, and may invest without limitation in U.S. dollar-denominated debt securities of foreign issuers. The Fund may invest up to 20% of its total assets in debt securities and instruments that are economically tied to emerging market countries. The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities. (This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as GNMA, FHA, FNMA and FHLMC.) 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. While the Fund may hold non-U.S. equity securities, the Fund will only invest in non-U.S. equity securities that trade in markets that are members of the ISG or are parties to comprehensive surveillance sharing agreements with the Exchange. The Fund may hold in the aggregate up to 15% of its net assets in illiquid securities, including Rule 144A securities. The Fund will not employ any leverage in order to meet its investment objective. The Fund will not invest in derivative securities including options, swaps or futures.

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 Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. 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. On a daily basis, the Adviser will disclose on the Fund's Web site 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. Price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on

[30] 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.

[31] 15 U.S.C. 78f(b)(5).

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. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the 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, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the 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.

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-2012–142 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-2012–142. 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–NYSEArca-2012–142* and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31120 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68496; File No. SR–ICEEU–2012–14]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Intra-Day Margin Calling Policy for Energy Clearing Members

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder notice is hereby given that on December 19, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III, below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(4)(ii) [4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to subject Energy Clearing Members to an Intraday Margin Call in the event that the Intraday Margin Liability of the Member exceeds certain defined limits. All capitalized terms not defined herein are defined in the ICE Clear Europe Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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 and comments may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C, below, of the most significant aspects of these statements.[5]

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In addition to providing clearing services for credit default swaps, ICE Clear Europe also provides clearing services for non-securities contracts in energy and emissions markets (''Energy Futures Products''). ICE Clear Europe will subject Energy Clearing Members to an Intraday Margin Call in the event that the Intraday Margin Liability of the Member is greater than:

- 20% of the Energy Clearing Member's total collateral held with ICE Clear Europe to meet margin requirements;
- 2.5% of the Clearing Member's Balance Sheet capital (discounted, where appropriate, by credit rating); and
- The individual Energy Guaranty Fund contribution of the Energy Clearing Member.

Intraday Margin Calls will be made independent of Energy Guaranty Fund and Balance Sheet capital if the Intraday Margin Liability is greater than the total collateral held with ICE Clear Europe to meet margin requirements.

ICE Clear Europe believes that the proposed change is consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to it. Section 17A(b)(3)(F)[6] of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest. ICE Clear Europe believes that subjecting Energy Clearing Members to an Intraday Margin Call under certain circumstances would help protect investors and the public interest.

B. Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe that the proposed rule change would have any impact, or impose any burden, on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ICE Clear Europe has not solicited written comments regarding the proposed change. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and Rule 19b–4(f)(4)(ii)[8] thereunder because it primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures, and does not significantly affect the securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. 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.[9]

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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comments@sec.gov.* Please include File No. SR–ICEEU–2012–14 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–0609.

All submissions should refer to File Number SR–ICEEU–2012–14. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of ICE Clear Europe, and on ICE Clear Europe's Web site at: *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_121912_2012–14.pdf.*

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–ICEEU–2012–14 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31127 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[5] The Commission has modified the text of the summaries provided by ICE Clear Europe.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4)(ii).

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68491; File No. SR–ISE–2012–101]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 504(f) To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration in Unusual Market Conditions

December 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 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 ISE Rule 504(f) to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration. The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend ISE Rule 504(f) to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration. This is a competitive filing that is based on proposals recently approved by NYSE MKT LLC (''MKT'')[3] and NYSE Arca, Inc. (''Arca'').[4]

ISE Rule 504 currently permits the Exchange to open additional series of options on individual stocks and exchange-traded funds (ETFs) until the beginning of the month in which the option expires or until five business days prior to expiration if unusual market conditions exist.[5] Options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security. However, if the price of the underlying stock moves significantly, there may be a market need for additional strike prices to adequately account for market participants risk management needs in a stock. In these situations, the Exchange has the ability to add additional series at strike prices that are better tailored to the risk management needs of market participants.[6] The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.[7] If the market need occurs prior to five business days prior to expiration, then the market participants may have access to an option contract that is more tailored to the movement in the underlying stock.[8] However, if the market need to manage risk due to unusual market conditions comes to light anytime from five to two days prior to expiration, then market participants are left without a contract that is tailored to manage their risk.[9]

The Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration in unusual market conditions. Since expiration of the monthly contract is on a Saturday, the close of trading on the second business day will typically fall on a Thursday. However, in the cases where Friday is a holiday during which the Exchange is closed, the close of trading on the second business day will occur on a Wednesday. The Exchange will continue to make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. The proposed change will provide an additional four days to the Exchange to gauge market impact of the underlying stock and to react to any market conditions that would render additional series prior to expiration beneficial to market participants. The Exchange believes that the impact on the market from the proposed change will be very minimal to market participants, however it will be extremely beneficial in that minority of situations where unusual market conditions dictate immediately prior to expiration. The proposal would simply allow participants to adjust their risk exposure in narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

This proposal does not raise any capacity concerns on the Exchange, because the changes have no material difference in impact from the current rules. The Exchange notes the proposed change allows for new strikes that would otherwise be permitted to add under existing rules either on the fifth day prior or immediately after expiration.[10] A strike which opens two days prior to expiration will have minimal impact on quoting, as it adds two series out of hundreds of thousands, and only for a small number of days.[11] Thus, any additional strikes that may be added under the proposed change

[3] *See* Securities Exchange Act Release No. 68460 (December 18, 2012) (SR–NYSEMKT–2012–41).

[4] *See* Securities Exchange Act Release No. 68461 (December 18, 2012) (SR–NYSEARCA–2012–94).

[5] *See* ISE Rule 504(f). 'Until the fifth business day prior' generally means up through the end of the day on the Friday of the week prior to expiration week.

[6] *See* ISE Rule 504.

[7] *See* ISE Rule 504(c).

[8] *Id.*

[9] While these situations are relatively rare, the Exchange represents that approximately two times a month there is a legitimate need to add additional strikes closer to expiration than the five business day limitation permits, due to it being necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.

[10] Any new strikes added under this proposal would be added in a manner consistent with the range limitations described in ISE Rule 504A.

[11] In the case of a multi-stock event where multiple stocks may be subject to unusual market conditions, a strike which opens two days prior to expiration will also have minimal impact on quoting, as it adds two series per stock out of hundreds of thousands, and only for a small number of days.

would have no measurable effect on systems capacity.

2. Basis

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 [12] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act [13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that providing an additional four days to the Exchange to gauge market impact and to react to any market conditions prior to expiration beneficial will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions prior to expiration. The Exchange also believes that the additional four days will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure with additional in the money series. While the four additional days may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by MKT and Arca that were recently approved by the Commission.[14] ISE believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform rules regarding the listing of strike prices.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission and would permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration in unusual market conditions.[17] Therefore, the Commission designates the proposal operative upon filing.[18]

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.

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–ISE–2012–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–101. 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 Commissions 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 inspection and copying in the Commission's Public Reference Room on official business days between 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 ISE. 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–ISE–2012–101 and should be submitted by January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31123 Filed 12–26–12; 8:45 am]

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra,* notes 3 and 4.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] *See supra* notes 3 and 4.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68492; File No. SR–ISE–2012–100]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Reduce the Response Times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism

December 20, 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 December 19, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 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 Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to reduce the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism (''PIM''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* on the Commission's Internet Web site at *http://www.sec.gov,* 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 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE Rules 716 (Block Trades) and 723 (Price Improvement Mechanism for Crossing Transactions) to reduce the response times in the Block Mechanism, Facilitation Mechanism, Solicited Order Mechanism and PIM from one second to 500 milliseconds (½ of one second).

Rule 716 contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism and Solicited Order Mechanism. The Block Order Mechanism allows members to obtain liquidity for the execution of a block-size order,[3] whereas the Facilitation and Solicited Order Mechanisms allow members to enter cross transactions seeking price improvement.[4] Rule 723 contains the requirements applicable to the execution of orders using the PIM. The PIM allows members to enter cross transactions of any size. The Facilitation, Solicited Order Mechanisms and PIM allow for ISE Members to designate certain customer orders for price improvement and submit such orders into one of the mechanisms with a matching contra order. Once such an order is submitted, ISE commences an auction by broadcasting a message to all Members that includes the series, price, size and side of the market.[5] Further, responses within the PIM (*i.e.,* Improvement Orders), are also broadcast to market participants during the auction. Orders entered into any of these mechanisms currently are exposed to all market participants for one second, giving them an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, the exposure period for each of the four mechanisms would be reduced to 500 milliseconds. When approving previous reductions in ISE exposure periods in these mechanisms the Commission concluded that reducing these time periods from three seconds to one second was consistent with the Act.[6]

ISE is not proposing any change to the requirement in ISE Rule 717(d) and (e) that requires an Electronic Access Member (''EAM'') to expose its customer's order on the ISE book for at least one second before either executing such agency order as principal or against orders solicited from Members and non-members, unless the EAM submits the agency order to the Facilitation Mechanism, Solicited Order Mechanism or PIM.[7] ISE believes this exception for the Facilitation Mechanism, Solicited Order Mechanism and PIM is appropriate because the customer order is guaranteed an execution at the National Best Bid/Offer (''NBBO'') or a better price through the Facilitation Mechanism, Solicited Order Mechanism and PIM. Additionally, ISE Members are informed about the agency order starting the auction through receipt of the broadcast. ISE Members have the opportunity to compete for participation in the execution of the customer order by responding to the broadcast with their best priced responses.

With respect to the Facilitation Mechanism, Solicited Order Mechanism and PIM, ISE believes the proposed rule change could provide more customer orders an opportunity for price improvement because it will reduce the market risk for all ISE Members executing trades in these mechanisms. ISE Members that submit orders into such mechanisms to initiate an auction (''Initiating Members'') are required to guarantee an execution at the NBBO or a better price, and are subject to market risk while the order is exposed in one of the mechanisms to other ISE Members. While other ISE Members are also subject to market risk, the Initiating Member is most exposed because the market can move against them during the auction period and they have guaranteed the customer an execution at the NBBO or better based on the market prices prior to the commencement of the auction. In today's fast-paced markets, big price changes can occur in one second, leaving the Initiating Members vulnerable to trading losses due to their choice to seek price improvement for their customer. The Initiating Member

[3] Block-size orders are orders for 50 contracts or more. *See* Rule 716(a).

[4] Only block-size orders can be entered into the Facilitation Mechanism, whereas only orders for 500 contracts or more can be entered into the Solicited Order Mechanism. *See* Rule 716(d) and (e).

[5] ISE Members may choose to hide the size, side and price when entering orders into the Block Order Mechanism.

[6] *See* Securities Exchange Act Release No. 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (Order granting accelerated approval of a proposed rule change as modified by amendments No. 1 and 3 thereto relating to reduction of certain order handling and exposure periods from three seconds to one second) (SR–ISE–2007–94).

[7] Since EAMs submitting orders into the Block Mechanism do not have the contra order, Rule 717(d) and (e) does not apply.

acts in a critical role in the price improvement process and their willingness to guarantee the customer an execution at the NBBO or a better price is keystone to the customer order gaining the opportunity for price improvement. Therefore, limiting Initiating Members' market risk by reducing the exposure time in the mechanisms should increase the likelihood that an Initiating Member would seek price improvement for its customer by entering such orders into one of the mechanisms.

Additionally, the Exchange does not believe that requiring the auction to run for one second is necessary in today's market where, generally, Members' systems have the capability to respond within milliseconds. As such, reducing the response time in the Block Order Mechanism is appropriate as Members no longer need one second to respond to the auction. Reducing the auction time for the Block Order Mechanism from one second to 500 milliseconds will allow members the opportunity to seek out liquidity in an expedient manner that is consistent with system capabilities.

ISE's Members operate electronic systems that enable them to react and respond to orders in a meaningful way in fractions of a second. ISE anticipates that its Members will continue to compete within the proposed auction duration of 500 milliseconds. In particular, ISE believes that 500 milliseconds will continue to provide ISE Members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk.

Reducing the duration of the auctions from one second to 500 milliseconds will benefit Members trading in the mechanisms. It is in these Members' best interest to minimize the auction time while continuing to allow Members adequate time to electronically respond. Both the order being exposed and the Members' responses are subject to market risk during the auction. While a limited number of Members wait to respond until later in the auction, presumably to minimize their market risk, in more than 90% of executions occurring in the mechanisms Members respond within the first 500 milliseconds. ISE believes that 500 milliseconds will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.[8]

In consideration of this proposed rule change, ISE surveyed all ISE Members that have participated in the mechanisms in 2011 and 2012 to substantiate that such ISE Members could receive, process and communicate a response to an ISE broadcast within 500 milliseconds. Twenty of the twenty-one firms surveyed indicated that they can, either currently or with some system development, receive, process and communicate a response back to ISE within 500 milliseconds.[9]

Also in consideration of this proposed rule change, ISE reviewed all executions occurring in the mechanisms by its Members for the month of October 2012. This review of executions in the mechanisms (excluding PIM) indicates that approximately ninety-three percent (93%) of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately eighty-nine percent (89%) of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds of the initial order, and eighty-five percent (85%) were submitted within 10 milliseconds of the initial order. The review of executions in the PIM indicates that approximately eighty-nine percent (89%) of responses that resulted in price improving executions at the conclusion of an auction were submitted within 500 milliseconds. Approximately sixty-six percent (66%) of responses that resulted in price improving executions at the conclusion of an auction were submitted within 100 milliseconds of the initial order, and sixty-four percent (64%) were submitted within 10 milliseconds of the initial order. As mentioned above, ISE surveyed Members that use the mechanisms to confirm that they have sufficiently automated electronic systems to enable them to react and respond to an auction within 500 milliseconds.

Accordingly, ISE believes that 500 milliseconds will continue to provide ISE Members with sufficient time to respond to, compete for, and provide price improvement for orders, and will provide investors and other market participants with more timely executions, and reduce their market risk. Moreover, Supplementary Material .04 to Rule 723 provides that the PIM will not run simultaneously with or overlap another PIM in the same series. As a result, Members may be unable to initiate PIMs on behalf of their customers. Reducing the auction time to 500 milliseconds will decrease the likelihood that an auction is underway when a customer order is received. Accordingly, ISE believes it is likely that the number of PIM transactions will increase, thereby providing customers a greater opportunity to benefit from price improvement.

Based on current market data related to the mechanisms and feedback from the surveyed ISE Members, ISE believes that reducing the exposure time in the mechanisms from one second to 500 milliseconds would not impair Members' ability to compete in the mechanisms. For example, in the mechanisms (excluding PIM) eighty-four percent (84%) of auctions include competition for execution (*i.e.,* at least one other Member competes for execution of the customer order), sixty percent (60%) of all auctions include two or more Members competing for an execution, while forty-five percent (45%) of all auctions include three or more Members competing for an execution. In the PIM, ninety-six percent (96%) of auctions include competition for execution (*i.e.,* at least one other Member competes for execution of the customer order), seventy-seven percent (77%) of all auctions include two or more Members competing for an execution, while forty-six percent (46%) of all auctions include three or more Members competing for an execution.

ISE believes that the information outlined above regarding price improving transactions in the mechanisms and the feedback provided by ISE Members provides substantial support for its assertion that reducing the auction from one second to 500 milliseconds will continue to provide Members with sufficient time to ensure competition for orders entered into the mechanisms, and could provide customer orders with additional opportunities for price improvement.

With regard to the impact of this proposal on system capacity, ISE has

[8] With Block Orders, the Member enters one side of the order in an effort to find contra-side liquidity. While this order is exposed, the Member is exposed to market risk. Therefore, reducing the exposure time will reduce the market risk for Block Orders just as it will reduce the market risk with respect to orders entered into the Facilitation Mechanism, Solicited Order Mechanism and PIM.

[9] Seventeen of the twenty-one firms surveyed indicated that they can currently receive, process and communicate a response back to ISE within 500 milliseconds. Of the four firms that cannot currently respond within 500 milliseconds, one firm stated that 500 milliseconds is sufficient for non-complex orders in the mechanisms, but had not yet tested for complex orders. Each of the four firms that need to perform systems work indicated that with six weeks notice of the implementation date, they can perform the systems work necessary to respond to an ISE broadcast within 500 milliseconds.

analyzed its capacity and represents that it has the necessary systems capacity to handle the potential additional traffic associated with the additional transactions that may occur with the implementation of the proposed reduction in the auction duration to 500 milliseconds. Additionally, the Exchange represents that its systems will be able to sufficiently maintain an audit trail for order and trade information with the reduction in the auction duration.

Upon effectiveness of the proposal, and at least six weeks prior to implementation of the proposed rule change, ISE will issue an Informational Circular to Members, informing them of the implementation date of the reduction of the auction from one second to 500 milliseconds in the mechanisms to allow members the opportunity to perform systems changes. This will give Members an opportunity to make any necessary modifications to coincide with the implementation date.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Section 6(b)(5) of the Act,[11] 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 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. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of orders in the mechanisms. Additionally, the proposed change will allow additional investors the opportunity to receive price improvement through the mechanisms, and will reduce market risk for ISE Members using the mechanisms. As such, ISE believes the proposed rule change would help perfect the mechanism for a free and open national market system, and generally help protect investors' and the public interest.

The Exchange believes the proposed rule change is not unfairly discriminatory because the auction duration would be the same for all Members. All Members in the mechanisms have today, and will continue to have, an equal opportunity to receive the broadcast and respond with their best prices during the auction. Additionally, ISE believes the reduction in the auction duration reduces the market risk for all ISE Members. The reduction in time period reduces the market risk for the Initiating Member as well as any Members providing orders in response to a broadcast. Moreover, based on the feedback ISE received from its Members, ISE believes that a reduction in the auction period to 500 milliseconds would not impair Members' ability to compete in the mechanisms. ISE believes these results support the assertion that a reduction in the auction duration would not be unfairly discriminatory and would benefit investors.

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

Within 45 days of the date of publication of this notice 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 such proposed rule changes; or

(b) Institute proceedings to determine whether the proposed rule changes 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 No. SR–ISE–2012–100 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–ISE–2012–100. 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–ISE–2012–100 and should be submitted on or before January 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–31124 Filed 12–26–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

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To allow the Pascua Yaqui Tribe to determine the requirements for membership in that tribe. (Dec. 20, 2012; 126 Stat. 1588)

H.R. 4014/P.L. 112–215
To amend the Federal Deposit Insurance Act with respect to information provided to the Bureau of Consumer Financial Protection. (Dec. 20, 2012; 126 Stat. 1589)

H.R. 4367/P.L. 112–216
To amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine. (Dec. 20, 2012; 126 Stat. 1590)

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